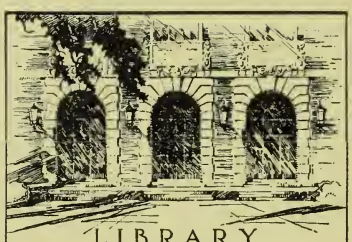

55TH ANNUAL REPORT

OF THE

INTERSTATE COMMERCE COMMISSION

NOVEMBER 1, 1941

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BUREAUS

REPORT OF THE
INTERSTATE COMMERCE COMMISSION

WASHINGTON, D. C., *November 1, 1941.*

To the Senate and House of Representatives:

The Interstate Commerce Commission has the honor to submit herewith its fifty-fifth annual report to the Congress. The period covered by this report extends from November 1, 1940, to October 31, 1941, except as otherwise noted.

A statement of appropriations and aggregate expenditures for the fiscal year ended June 30, 1941, is contained in appendix H to this report.

TRANSPORTATION AND NATIONAL DEFENSE

The national-defense program, the Lease-Lend Act, and other consequences of the war which is ravaging so large a part of the world have wrought great changes in transportation conditions. The tremendous productive capacity of the country, much of it unused for a long period of years, has been brought into action. The peak has not yet been reached, but present production is far ahead of what it was only a comparatively short time ago. As traffic marches hand in hand with production, the business and the revenues of the carriers have mounted almost as a river rises in a spring freshet. While this was a happy change from what had gone before, yet with it have come new questions.

THE RAILROADS

Finances.—If the present and immediately prospective traffic could be maintained indefinitely, the financial problems of the railroads would be quite different from what they have for some years been supposed to be. This does not mean that those problems would be solved, for traffic and revenues do not always run in parallel lines, and net income may be a widely divergent figure. If we are caught in a vortex of rising wages and prices, to say nothing of taxes, railroad expenses and charges may outstrip revenues, unless they are augmented by corresponding rate increases; and the effect of the latter, in view of the wide prevalence of transportation competition, is never certain. Nevertheless, it is probable that if traffic could be maintained, the railroads would enjoy a very considerable measure of financial relief.

We believe it is only wise to bear in mind that present traffic is no normal growth. It is not the creation of private business enterprise but the result of an enormous expenditure of borrowed Government

funds in a supreme effort deemed necessary for national defense. Much of the new production is taking the form of instruments of destruction which have no value save in warfare. Manifestly, national effort of such a character and so financed cannot be maintained indefinitely, and could be prolonged only by sacrifices on the part of the population which would cut deeply into normal production and consumption. Traffic thus created is not the stuff out of which future railroad prosperity is likely to be built.

It may be, and we hope, that these times of stress will generate a wisdom and creative ability which will enable the country to avoid a disastrous aftermath when the need for the present supreme effort in the cause of national defense has passed, and to keep all its people active in the production of real wealth in place of the means of destruction. However, it certainly is not safe to assume that this will prove possible, or that the railroads, quite apart from any decline in general traffic, will not be faced with a competition from other forms of transportation more formidable than any they yet have encountered.

In these circumstances, and with the future so difficult to forecast optimistically, we have not been able to arrive at the conclusion, which so many have urged upon us, that present or immediately prospective earnings evidence values of the properties of the railroads which are in bankruptcy materially in excess of the estimated values upon which we have based our plans of reorganization under section 77 of the Bankruptcy Act. Moreover, so far as most of the railroads which are not in bankruptcy are concerned, it seems clear that it would be a mistake, in the present tide of apparently revived earning power, to ignore the fact that they have a very heavy burden of debt and that it may be a crippling burden in the future, if earnings should radically decline. We have noted with approval that many of the managements are avoiding this mistake and are using the favorable earnings of the present, in one way or another, to reduce fixed charges as rapidly as practicable. While stockholders may on first thought be disposed to object to such a policy, it is the stockholders who will suffer most in the event of future insolvency. They will, we believe, be shortsighted if, by insistence on immediate dividends, they jeopardize the continuance and possible expansion of a program of debt reduction. It is clearly the sane and sound policy to pursue. In our annual report for 1933, we discussed the dangers of the heavy railroad indebtedness and the wisdom of taking every opportunity to reduce it especially by establishing sinking funds. We have since generally required such funds in authorizing the issue of new bonds.

Service.—Adequate and efficient transportation is, of course, vital to the national-defense program. When the program was inaugurated, there were apprehensions that the railroads might have difficulty in

carrying the load which it would place upon them. In the face of a declining traffic and a great increase in competition from other forms of transportation, they had permitted their supply of both cars and locomotives to decrease materially. Freight cars available for service had decreased in number since 1929, when traffic was at a peak, more than 30 percent, and, to a lesser degree, motive power also had decreased. It was feared that these conditions would lead to congestion in the handling of freight by the railroads like that which was so disastrous at the time of the last World War.

These apprehensions have thus far proved unfounded, and for two principal reasons. In the first place, the railroads are now able, because of improvement in equipment and in methods and conditions of operation, particularly the increase in average speed and the elimination of division points, to do materially more work with each unit of equipment. On the basis of net ton-miles per day, a car in 1941 has been equal to about 1.33 cars as of 1929. Even more important is the fact that the lessons of the World War experience have been heeded. One of the major causes of congestion at that time was the fact that many cars were loaded and moved which could not be unloaded when they reached their destinations, and there they stood on sidetracks for days, weeks, and even months. One result was that many of the cars were taken out of circulation and used for storage instead of the movement of freight, and a secondary result was that terminal yards were plugged, and the circulation of the cars which were available for movement was obstructed.

Prior to Federal control, which began in 1917, the railroads lacked an effective agency for the centralized control of car distribution and movement. This lack was supplied by the creation, soon after the railroads were returned to private control in 1920, of what is now the Car Service Division of the Association of American Railroads, to which the individual railroads have delegated extensive powers. At about the same time, steps were taken to organize Shippers Advisory Boards in various regions of the country, with which the railroads could maintain close contact and from which they could secure advice in regard to the prospective movement of traffic and cooperation in dealing with traffic difficulties. Furthermore, the Commission was given, by the Esch Car Service Act of 1917, as amended and strengthened by the Transportation Act, 1920, very drastic powers over freight-car service, which it can exercise in the event of an—

> emergency requiring immediate action, * * * either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report.

To administer these and other powers with respect to car service, the Commission created its Bureau of Service. Moreover, to have imme-

diate responsibility for the transportation problems arising out of the national-defense program, the President early in 1940 selected Ralph Budd, president of the Chicago, Burlington & Quincy Railroad Company, as the transportation member of the Advisory Commission to the Council of National Defense.

From the beginning of the present emergency, Mr. Budd, the Car Service Division of the Association of American Railroads, the Shippers Advisory Boards, and our Bureau of Service have in close cooperation concentrated on the object of keeping the freight cars in circulation, preventing their use for storage purposes, and inducing maximum loading. In other words, the effort has been to avoid the mistakes which caused most of the railroad trouble at the time of the last World War. In this effort they have had most excellent cooperation from the transportation departments of the Army and Navy and also from the industries and shippers of the country, and so far the object sought has in large part been accomplished.

As yet we have had no occasion to use our drastic emergency powers, but we have endeavored to be in a position to use them promptly and effectively if need should develop and to join in the efforts to avoid such need. Our service agents, representing, as they do, the Government of the United States, can be particularly effective in such efforts. At the beginning of the emergency, the Bureau had only 16 such service agents in the field. It was recognized that this number would be wholly insufficient for efficient administration of the emergency powers, if serious conditions should require their exercise, or to lend adequate aid to the efforts to avoid the development of such conditions. The force was temporarily increased by 10 men of the requisite experience borrowed from other bureaus, and funds were sought from Congress to replace these borrowed men and add still others. On July 1, 1941, an appropriation of $110,000 was made available for this purpose.

As a result of this appropriation, the Bureau of Service now has 40 regular or temporary service agents stationed at the following important railroad centers throughout the country: Boston, Mass., Chicago, Ill., Washington, D. C., New York, N. Y., Dallas, Tex., Detroit, Mich., Rochester, N. Y., San Francisco, Calif., Minneapolis, Minn., Portland, Oreg., New Orleans, La., Kansas City, Mo., Louisville, Ky., Jacksonville, Fla., Birmingham, Ala., Denver, Colo., El Paso, Tex., Cleveland, Ohio, Ogden, Utah, Newark, N. J., Los Angeles, Calif., Wichita, Kans., Cincinnati, Ohio, Norfolk, Va., and St. Louis, Mo.

While the efforts to maintain adequate and efficient railroad service have thus far been successful, it does not follow that trouble will not arise in the future. In addition to the heavy increase in traffic which the national-defense program has brought, other burdens have been

imposed on the railroads because of dislocations in traffic movement. Many of the intercoastal ships operating through the Panama Canal have been diverted to foreign trade, with consequent diversion of traffic to the transcontinental rail lines. Similar diversions have been caused by withdrawal of ships operating along the Atlantic, Gulf, and Pacific coasts. Particularly the withdrawal of oil tankers operating between Gulf and North Atlantic ports threatened to impose a very heavy special burden on the railroads in the transportation of petroleum and its products to Atlantic seaboard territory. The subsequent return of a large number of these tankers relieved this situation materially, but it is illustrative of the dislocations which are likely at any time to arise under present emergency conditions and to increase railroad difficulties. It is also true that the peak in traffic which has resulted from the national-defense and lease-lend programs has not been as high as many expected, and it may rise to a more formidable height as time goes on.

In anticipation of such needs, the railroads have planned to add a considerable number of new cars and locomotives. They have been conservative in these plans, not only because of their own financial situations, present and prospective, but also in the interest of conservation of materials which are needed for national defense. There is all the more reason, therefore, for the avoidance of anything which would cause delay in the construction of this new equipment. It is vitally necessary if the orderly and expeditious progress of the national-defense program is to be protected, in view of the indispensable relation of transportation to that program. As this is being written, there is cause for apprehension that, in the allocation of the metals of which there is a shortage, the railroads may be deprived of the materials necessary for the prompt construction of this new equipment, or even be unable to obtain an adequate supply of materials for the repair of the motive power and cars which are now in service and of the way and structures over which they operate. Already the construction of the new equipment has, it seems, been substantially delayed, and stocks of materials necessary for repairs are rapidly being depleted. This is, we believe, now the greatest and most imminent danger which threatens the provision of adequate and efficient railroad service during the remainder of the emergency. It is essential to the national welfare that this danger be removed.

There have been indications that some of those in authority may entertain the thought that because the supply of metals is not sufficient to meet all needs which could be regarded as essential, the transportation quota should be restricted to the service needs which are predominant in the emergency. In other words, the railroads should not be allocated all the materials necessary to maintain a service which would meet all demands, and we should see to it by embargoes, priority

orders, and the like that the deficiency in service is suffered by the traffic which is of lesser public importance. If such restrictions are to be imposed upon the normal commerce and industry of the country, we believe it to be far wiser that they be imposed upon the production of commodities than upon their movement after they have been produced. Restrictions of the latter character will be most difficult to plan and administer, and inevitably will have indirect results which will seriously impair the movement of all traffic, including the movement of essential war materials.

Herein, under the heading "Bureau of Service," the railroad-service situation is further discussed.

OTHER CARRIERS

While the railroads still carry the major part of the traffic, the other forms of transportation are now very important factors, as is well known; and the statement holds true of all of them, including the motor carriers, water carriers, pipe lines, and air carriers. They, like the railroads, have essential roles in the national-defense program. Over the air carriers we have no jurisdiction. With respect to the pipe lines, the important question, so far as national defense is concerned, is whether new lines should be built, and, if so, where. This matter has been dealt with during the year by special legislation, discussed herein under the heading "Pipe Lines."

Water Carriers.—As stated above, many ships engaged in the intercoastal and coastwise trades have been diverted, because of the war conditions, to foreign trades. This has produced a shortage in domestic transportation of goods by ocean. We have no direct jurisdiction over water-carrier service, except so far as we have power to grant or withhold authority to operate. The situation with respect to such operating authority which has been created by the emergency is discussed herein under the heading "Bureau of Water Carriers." By Public Law No. 173, passed at the last session of Congress, the President was empowered, during the emergency declared by him "on May 27, 1941, to exist but not after June 30, 1943," to authorize the United States Maritime Commission to provide through the issue of warrants for priorities in transportation by merchant vessels in the interests of national defense. The warrants grant priorities over other merchant vessels "with respect to the use of facilities for loading, discharging, lighterage or stowage of cargoes, the procurement of bunker fuel or coal, and the towing, overhauling, drydocking or repair of such vessels"; and they set forth the conditions to be complied with by the affected vessel—

> by reference to an undertaking of the owner or charterer with respect to the trades in which such vessel shall be employed, the voyages which it shall undertake, the class or classes of cargo or passengers to be carried, the fair and reasonable maximum rate of charter-hire or equivalent, and such incidental

and supplementary matters as appear to the United States Maritime Commission to be necessary or expedient for the purposes of the warrant.

The Act further provides that it shall be the policy of the Maritime Commission—

to make fair and reasonable provision for priorities with respect to (1) the importation of substantial quantities of strategic and critical materials, (2) the transportation of substantial quantities of materials when such transportation is requested by any defense agency, and (3) the transportation in the foreign or domestic commerce of the United States of substantial quantities of materials deemed by the Commission to be essential to the defense of the United States.

The cargo carriers on the Great Lakes are performing with much efficiency a service of enormous importance to the national-defense program in the movement of iron ore from the Lake Superior ports to ports on Lake Michigan and Lake Erie. On the Mississippi River system, the up-river cargoes of the barges in the handling of petroleum, sulphur, and scrap iron have greatly increased; but the barges have suffered a severe decline in the down-river movement of iron and steel articles, which has been a very important part of the river commerce, because of the great demand for such articles and the desire of consumers to receive them in the shortest possible time. Consequently much of this movement has been diverted for the time being to the railroads, but this is no doubt only a temporary condition. The need of the barge lines for expansion in order to meet prospective national-defense demands, and for an appropriate allocation of materials in that connection, is like that of the railroads and the motor carriers.

Motor Carriers.—The business and revenues of the motor carriers of property subject to our jurisdiction have increased during the emergency at an even faster rate than the business and revenues of the railroads. The motor carriers of passengers are playing a very important part in the movement of troops and of the civilian population employed in the defense industries. To promote the efficient conduct in the emergency of the entire motor-carrier industry, Mr. Budd, as Transportation Commissioner in the Advisory Commission to the Council of National Defense, was instrumental in the organization, as an adjunct to his office, of Central and Regional Motor Transportation Committees. The Commissioner to whom our Bureau of Motor Carriers reports was appointed chairman of the central committee, and the district directors of the 16 field districts of our Bureau of Motor Carriers were appointed as neutral chairmen of the 16 regional committees. The committee membership is in each case made up of representatives of public interests, for-hire trucking, private trucking, and bus operations. The functions and duties of the central and regional committees, in general terms, are to formulate and execute plans for the efficient and economical use of highways and

commercial motor vehicles, and to cooperate with Government agencies and those furnishing or using transportation facilities in promoting the national defense, and to insure sufficiency of commercial motor-vehicle equipment to meet the needs of national security. Our participation in work of this kind was authorized by a minute of the Commission which directed that all possible help should be furnished to the responsible national-defense officers. The central committee was appointed in June 1941 and the regional committees during July, and all have been at work on matters incident to national-defense activities, including studies of improved efficiency in commercial-vehicle operation, investigation of possible shortages of equipment or inadequate highway-transport facilities, and others. Assistance has been given to the Office of Production Management in analysis of the civilian demand for trucks, busses, trailers, and other highway-transport equipment.

The situation of the motor-carrier industry with respect to the supply of materials necessary to the maintenance of their properties, the replacement of equipment, and the provision of new equipment is much the same as the corresponding situation of the railroads above discussed. As noted in our two last annual reports, we have no such emergency powers with respect to motor-carrier service as we have been given with respect to railroad "car service." It is most desirable that this situation be corrected by appropriate legislation.

TRAFFIC AND EARNINGS OF TRANSPORT AGENCIES

The increases in the gross revenues of transport agencies in the United States, which began in the latter part of 1939, were accelerated in 1941 under the stimulus of the defense effort. The revenues for recent periods of all classes of carriers reporting to us are given in the following table:

Operating revenues

Class of carrier	12 months ended June 30, 1941		Year ended Dec. 31, 1940		Year ended Dec. 31, 1939
	Amount	Percent of 1939	Amount	Percent of 1939	Amount
	Thousands		*Thousands*		*Thousands*
Steam railways	$4,903,627	118.4	$4,459,289	107.7	$4,140,333
Railway Express Agency [1]	126,391	112.9	119,957	107.1	111,976
Pullman Company	62,784	103.6	60,096	99.1	60,625
Electric railways	55,400	110.0	52,661	104.6	50,367
Water lines [2]	125,490	113.5	113,391	102.6	110,551
Pipe lines	232,524	109.4	225,760	106.3	212,466
Motor carriers of passengers [3]	193,500	115.2	176,000	104.8	168,000
Motor carriers of property [3]	1,000,000	125.6	897,500	112.8	[4] 796,000
Total	[5] 6,699,716	118.6	6,104,654	108.0	5,650,318

[1] Excludes payments to others for express privileges.
[2] Revenues of additional water carriers brought under our jurisdiction by the Transportation Act of 1940 not included.
[3] Revenues for smaller carriers partly estimated.
[4] Revised on the basis of additional information.
[5] Partly estimated for small carriers.

Aggregate revenues for the carriers subject to our jurisdiction amounted to $6,699,716,000 for the 12 months ended June 30, 1941, which represents an increase of 9.7 percent over the total for the calendar year 1940 and of 18.6 percent compared with revenues for 1939. The motor carriers of property have made the greatest relative gains in revenue during the current expansion, but the freight revenue of the railways, not given separately in the table, has increased by nearly as large a percentage since 1939. For the carriage of passengers the increases in revenue have been smaller.

Because uniform and complete statistics are not available for all agencies, the relative importance of the several modes of transportation in the United States can only be broadly estimated. Subject to a margin of error that may be considerable, especially for highway transportation, the following table gives the ton-miles and passenger-miles of all intercity carriers, public and private, except coastwise and intercoastal water carriers, for the calendar years 1939 and 1940:

Volume of intercity traffic, public and private, by kinds of transportation

Agency	Ton-miles				Passenger-miles			
	1939 [1]	1940	Percent of total		1939 [1]	1940	Percent of total	
			1939	1940			1939	1940
	Millions	*Millions*			*Millions*	*Millions*		
Railways, steam and electric	336,100	376,218	62.20	61.34	23,669	24,761	8.71	8.71
Highways	43,000	48,500	7.96	7.91	245,891	257,222	90.49	90.46
Inland waterways, including Great Lakes	96,249	117,296	17.81	19.13	1,486	1,317	.55	.46
Pipe lines	65,015	71,279	12.03	11.62				
Air carriers (domestic revenue service including express and mail)	11	14	(2)	(2)	678	1,041	.25	.37
Total	540,375	613,307	100.00	100.00	271,724	284,340	100.00	100.00

[1] Some of the 1939 figures as given in the 54th Annual Report have been revised.
[2] Less than 0.01 percent.

SOURCES:
1. I. C. C. reports; electric-railway ton-miles and passenger-miles estimated on basis of revenues.
2. Truck ton-miles estimated on basis of Public Roads Administration and Interstate Commerce Commission data. Bus passenger-miles estimated from revenues divided by 1.5 cents per passenger-mile. Passenger-miles of private automobiles estimated by increasing the 1933 estimate of the Federal Coordinator of Transportation in accordance with increased registrations. No allowance has been made for possible change since 1933 in intercity mileage per private passenger vehicle.
3. Office of Chief of Engineers, U. S. Army. Passenger-miles estimated on basis of passengers carried, excluding ferry service.
4. Estimated by converting barrel-miles reported to I. C. C. into ton-miles and allowing for nonreporting pipe lines. Includes refined as well as crude oil, with allowance for crude-oil gathering lines.
5. Civil Aeronautics Journal, Civil Aeronautics Administration, U. S. Department of Commerce.

The figures in the preceding table indicate an estimated total of 613,307,000,000 ton-miles of intercity traffic for 1940 and an increase of 13.5 percent compared with the estimated total for the year 1939. All types of carriers shared in the increase, with carriers by air and on the inland waterways showing the greatest percentage gains. Sharply increased traffic on the Great Lakes accounted for almost all of the increase for inland waterways. Of the total intercity

ton-miles for the year 1940, the railways accounted for 61.34 percent, the inland-waterway carriers for 19.13 percent, the pipe lines for 11.62 percent, and the trucks for 7.91 percent. Excluding the Great Lakes, traffic on the inland waterways amounted to 3.53 percent of the total ton-miles.

The estimated total of 284,340,000,000 intercity passenger-miles for the year 1940 represents an increase of 4.64 percent over the preceding year. Increases are shown for every type except inland-waterway carriers, for which the estimated passenger-miles declined 11.37 percent. The greatest increase in passenger traffic over 1939 was reported by the air carriers, amounting to 53.64 percent in terms of passenger-miles. For the year 1940, private automobiles, not shown separately in the table, performed 86.43 percent of the estimated total intercity passenger-miles. Railways accounted for 8.71 percent, busses for 4.03 percent, inland-waterway carriers for 0.46 percent, and air carriers for 0.37 percent. Excluding travel in private automobiles, the commercial carriers shared in the total intercity revenue traffic as follows: Railways, 64.16 percent; busses, 29.73 percent; inland waterways, 3.41 percent; and airways, 2.70 percent. The revenue passenger-miles performed in scheduled domestic air service were equal to 14.28 percent of railway passenger-miles in parlor and sleeping cars for the year 1940.

No general change in the level of railway freight rates has been ordered since the increase early in 1938. (*Fifteen Percent Case, 1937–1938*, 226 I. C. C. 41.) The revenue per ton-mile for class I line-haul railways advanced from 0.935 cent for 1937 to 0.983 cent for 1938 and then declined to 0.973 cent for 1939 and to 0.945 cent for 1940. A further decline to approximately the 1937 level is indicated for the year 1941. These decreases are attributable in part to numerous voluntary rate reductions, and in equal or perhaps greater measure to changes in the composition of traffic.

The general trend of passenger fares in recent years has been downward, which is reflected in declining average revenue per passenger-mile for all steam railways from 2.81 cents for 1929 to 1.84 cents for 1939 and 1.76 cents for 1940. For the first 7 months of 1941, the revenue per passenger-mile (excluding commutation) for class I railways was 1.90 cents, a decrease of 2.56 percent from the average of 1.95 cents for the corresponding period of 1940. There has been no change in the prescribed basic railway-passenger-fare structure since we ordered a reduction from 2.5 to 2 cents in the maximum railway-coach fare for eastern territory, which change became effective March 24, 1940. On May 5, 1941, the railroads voluntarily established a special fare of 1.25 cents round trip in coaches for members of the armed forces traveling on furlough. The effects of these and earlier

fare reductions in stimulating the volume of travel by rail are clouded by sharp changes in business conditions and the national income and, recently, by the large and increasing movements of the armed forces and civilians incident to defense activities.

Class I railway traffic and revenues by districts for the first 7 months of 1941, in comparison with the same periods of 1930, 1939, and 1940, are shown below:

Class I railway traffic and revenues

First 7 months of each year	All districts		Eastern district		Southern district		Western district	
	Total	Percent of 1930	Total	Percent of 1930	Total	Percent of 1930	Total	Percent of 1930
Freight ton-miles	*Millions*		*Millions*		*Millions*		*Millions*	
1941	253,583	113.36	104,128	109.66	57,191	114.30	92,264	117.24
1940	204,074	91.23	83,057	87.47	49,864	99.66	71,153	90.41
1939	172,795	77.25	68,824	72.48	39,907	79.76	64,064	81.40
1930	223,690		94,955		50,036		78,699	
Freight revenue								
1941	2,408	100.94	1,046	100.83	473	106.03	889	98.54
1940	1,935	81.09	829	79.91	400	89.50	706	78.27
1939	1,715	71.89	707	68.16	346	77.65	662	73.39
1930	2,386		1,037		447		902	
Passenger-miles								
1941	16,103	99.77	8,012	87.50	2,860	146.19	5,231	104.06
1940	13,138	81.40	6,892	75.26	2,033	103.93	4,213	83.81
1939	12,801	79.31	6,740	73.60	1,758	89.88	4,303	85.60
1930	16,140		9,157		1,956		5,027	
Passenger revenue								
1941	285	63.86	146	60.20	50	81.35	89	62.53
1940	234	52.58	127	52.36	35	58.07	72	50.58
1939	239	53.66	132	54.55	33	53.12	74	52.37
1930	446		242		62		142	

The data given in the preceding table reveal that the large increases of railway traffic and revenues which have occurred within the past 2 years have brought the carriers, except for passenger revenue, to or above the levels of the year 1930. The latter year, although not the best in railway history, was considerably better than any intervening year to 1941. The revenue freight service rendered by the class I railways during the first 7 months of 1941, measured in ton-miles, exceeded by 13.36 percent the total for the corresponding period of 1930. Freight revenue of these carriers was approximately the same as for the 1930 period. The number of passenger-miles of service performed by the class I railways for the 1941 period also returned to the 1930 level. Because of substantial rate reductions, however, total passenger revenue for the 7 months of 1941 was only 63.86 percent as great as for the corresponding 1930 period. Carriers in all three districts have shared in the gains, with the southern district making the best comparative showing with the earlier periods, especially as to passenger traffic and revenues. In the latter respect, the railways in the eastern district have had less improvement than the others.

Significant changes have occurred since 1930 in the composition of railway traffic and in the sources of freight revenue, reflecting both

diversion to other transport agencies and the effects of the current defense program on the Nation's economy. The distribution of the freight revenue also has been affected by numerous rate adjustments.

Changes in composition of freight and sources of freight revenue, 1930–41

Commodity groups	Tons of revenue freight originated (6 months ended June 30)			Freight revenue[1] (6 months ended June 30)		
	1941	1930	Percent change,[2] 1930 to 1941	1941	1930	Percent change,[2] 1930 to 1941
	Thousands	*Thousands*		*Thousands*	*Thousands*	
Products of agriculture	39,552	43,951	10.0	$253,348	$283,685	10.7
Animals and products	7,518	11,409	*34.1*	84,500	111,313	*24.1*
Products of mines	294,491	303,573	*3.0*	552,880	584,000	*5.3*
Products of forests	33,326	41,203	*19.1*	143,446	144,838	*1.0*
Manufactures and miscellaneous	159,751	148,246	*7.8*	904,977	757,225	*19.5*
All less-than-carload freight	8,398	15,455	*45.7*	140,937	221,029	*36.2*
Total	543,036	563,837	*3.7*	2,080,088	2,102,090	*1.0*

[1] For most reporting carriers, gross freight revenue without adjustment for absorptions and corrections.
[2] Italicized figure shows increase; all others, decrease.

According to the data given in the preceding table, total tonnage originated by the class I railways for the first 6 months of 1941 was 3.7 percent less and total freight revenue was 1.0 percent less than for the corresponding period of 1930. The greatest declines in tonnage are shown for less-than-carload freight, animals and products, and products of forests. For the first two of these groups the declines of freight revenue also were large. The manufactures-and-miscellaneous group was the only one for which increases have occurred; these increases amounted to 7.8 percent in tonnage originated and 19.5 percent in freight revenue. As a result of these changes, the manufactures-and-miscellaneous group of commodities accounted in the 1941 period for 29.4 percent of the total tonnage originated and for 43.5 percent of the total freight revenue, figures which compare respectively with 26.2 percent and 36.0 percent for the corresponding 6 months of 1930.

In comparison with the expanded volume of freight traffic, there was only a small increase from 1,662,611 on August 31, 1940, to 1,687,393, on August 31, 1941, in the number of freight cars owned by class I railways. The available supply of cars was enlarged considerably, however, by reduction in the number of unserviceable units. There also was substantial improvement in the utilization of the available freight cars for the period May–August 1941 compared with the same months of 1940, as indicated in the table below. In view of the difficulties encountered in adding to the car supply, it was evident by the summer of 1941 that prompt handling of the fall traffic peak would depend on improved operating performance in the utilization of freight cars.

Freight-car supply and utilization, class I steam railways

Item	May–August, inclusive		Increase or decrease [1]
	1940	1941	
			Number
Freight cars owned Aug. 31 [2]	1,662,611	1,687,393	24,782
Freight cars on line Aug. 31 [2]	1,852,222	1,922,156	69,934
Unserviceable	142,604	80,965	*61,639*
Serviceable	1,709,618	1,841,191	131,573
Active	1,605,248	1,794,203	188,955
Surplus [3]	104,370	46,988	*57,382*
			Percent
Net ton-miles per train-mile [4]	875	976	11.54
Net ton-miles per loaded car per mile [4]	28.1	29.1	3.56
Car-miles per freight car per day:			
All freight cars	34.4	41.8	21.51
Serviceable freight cars	37.5	43.9	17.07
Active freight cars [5]	40.8	45.6	11.76
Net ton-miles per freight car per day [4]	599	781	30.38
Car-miles per train-mile	50.2	51.2	1.99
Percent loaded of total freight cars per mile	61.9	64.2	3.72
Train-miles per train-hour (freight service)	16.8	16.5	*1.79*

[1] Italics indicate decrease.
[2] Switching and terminal companies included.
[3] Average daily surplus of railroad-owned cars as reported by the Association of American Railroads for final period of August.
[4] Including nonrevenue freight.
[5] Surplus freight cars deducted from number serviceable.

Of the revenues derived by the railways from transportation services and from other sources of income, the investors' share is the remainder after deduction for wages and salaries, cost of materials, depreciation, and taxes. The amount available for rents, interest, and stockholders' net income in 1940 was $825,355,599, which was approximately $100,000,000 more than for 1939 and about the same as for 1936, but $278,653,340 less than for the year 1930. The investors' share as a percentage of revenues and other income was greater for 1940 than for 1939; but it was less than for 1936 and 1930 when taxes absorbed a smaller portion of the total. The comparisons are shown in the following table:

Condensed income account of all classes of steam railways considered as one system, 1940, 1939, 1936, and 1930

Item	Year ended December 31				Percent of 1930		
	1940	1939	1936	1930	1940	1939	1936
	Millions	*Millions*	*Millions*	*Millions*			
Revenues and other income	$4,553	$4,230	$4,301	$5,641	80.71	74.99	76.25
Wages and salaries	1,961	1,858	1,827	[1] 2,462	79.65	75.47	74.21
Cost of materials, depreciation, etc	1,342	1,262	1,303	1,706	78.66	73.97	76.38
Taxes	425	384	346	369	115.18	104.07	93.77
Investors' share (available for rents, interest, and stockholders' net income)	825	726	825	1,104	74.73	65.76	74.73
Investors' share as percentage of revenues and other income	18.1	17.2	19.2	19.6			

[1] Wages and salaries, not being available for class II and III roads and for switching and terminal companies for 1930, are stated on a percentage basis of returns for 1936 with respect to those classes.

As of July 31, 1941, there were 96 steam railways of all classes in receivership or trusteeship, and they accounted for 72,743 miles of road operated, or 29.5 percent of the entire railway mileage. During the year 1940, 1 railway was reorganized, 2 abandoned operations, 3 were released without reorganization, and receivers were appointed for 1 road. In the first 7 months of 1941, the number reorganized was 3, 3 abandoned operations, 2 were released without reorganization, and 1 was placed in receivership.

The list of railways in receivership or trusteeship on July 31, 1941, included 35 class I carriers. In the following table the earnings and coverage of fixed charges for recent periods are shown separately for the class I railways in receivership or trusteeship and for the other class I carriers:

Income and fixed charges, class I railways

Item	Not in receivership or trusteeship		In receivership or trusteeship	
	Year ended Dec. 31, 1940	12 months ended July 31, 1941	Year ended Dec. 31, 1940	12 months ended July 31, 1941
Net railway operating income	$577, 237, 442	$741, 926, 223	$104, 896, 036	$176, 812, 180
Other income (net)	130, 208, 117	128, 327, 312	11, 194, 976	9, 726, 188
Income available for fixed charges	707, 445, 559	870, 253, 535	116, 091, 012	186, 538, 368
Fixed charges	428, 758, 908	436, 844, 804	179, 820, 489	178, 644, 320
Ratio of income to fixed charges	1. 650	1. 992	0. 646	1. 044

The income available for fixed charges increased for both groups of roads, but the improvement was greater on a percentage basis for the carriers in receivership and trusteeship than for the others. Fixed charges of the carriers in the hands of the courts were fully earned by a small margin for the 12 months ended July 31, 1941, while for the calendar year 1940 only 64.6 percent of their fixed charges were covered. The carriers not in trusteeship or receivership improved their fixed-charge coverage from 1.65 times for the year 1940 to nearly twice for the 12-month period ended July 31, 1941.

The rising volume of railway traffic has been accompanied by increasing operating expenses, especially for maintenance, but the increase of expenses has been less than that of revenues, as shown on the following page.

Revenues and expenses of class I line-haul steam railways

Year	Operating revenues	Total operating expenses	Ratio of operating expenses to revenues	Maintenance of way, structures, and equipment		Ratio of maintenance to revenue	
				Including depreciation	Excluding depreciation	Including depreciation	Excluding depreciation
	Millions	*Millions*	*Percent*	*Millions*	*Millions*	*Percent*	*Percent*
1929	$6,280	$4,506	71.8	$2,058	$1,839	32.8	29.3
1930	5,281	3,931	74.4	1,725	1,500	32.7	28.4
1936	4,053	2,931	72.3	1,238	1,044	30.5	25.8
1937	4,166	3,119	74.9	1,322	1,125	31.7	27.0
1938	3,565	2,722	76.4	1,097	895	30.8	25.1
1939	3,995	2,918	73.0	1,233	1,031	30.9	25.8
1940	4,297	3,089	71.9	1,316	1,110	30.6	25.8
1941 [1]	4,956	3,364	67.9	1,454	1,241	29.3	25.0

[1] 12 months ended August 31, 1941.

The ratio of operating expenses to operating revenues for the 12 months ended August 31, 1941, amounting to 67.9 percent, was considerably lower than for any of the years shown in the table, including 1929. The operating ratio of the class I carriers for the recent period was in fact lower than for any calendar year since 1916, when it was 65.5 percent. The ratio of maintenance expenses to revenues also has declined to an unusually low level, which is all the more notable because much railroad equipment and plant has been reconditioned since the latter part of 1939.

The number of employees of class I line-haul railways at mid-September 1941, according to preliminary reports, was 1,211,258, which was the greatest since September 1931, when the total was 1,235,457. For the first 8 months of each year, the number (average of middle of month counts) of all classes of employees was 1,133,219 in 1937, 928,727 in 1938, 966,385 in 1939, 1,014,281 in 1940, and 1,107,380 in 1941. For the corresponding period of 1930 the average was 1,531,695. Railway employment has not recovered to the same extent as railway revenues and traffic. The seasonally adjusted index of railway employment, which is based on the 1935–39 period, was 116.4 for September 1941, it having risen each month since November 1940, when it was 101.6. Also based on the 1935–39 period and adjusted for seasonal changes, the index of freight revenue was 146.7, the passenger-revenue index was 122.8, and the carloadings index was 121.6, all for September 1941. Comparing the first 8 months of 1941 with the corresponding period of 1930, operating revenues for the recent period amounted to 95.3 percent of the 1930 level, but employment was only 72.3 percent of the average for the 1930 period. However, total compensation of employees for the 8 months of 1941 was 82.7 percent of the total for the same period of 1930. The average monthly compensation per employee, based on the midmonth count, was approximately $163.71 for the 1941 period, or 14.4 percent more than the $143.08 average monthly compensation

for the corresponding period of 1930. If part-time workers are included, the average earnings per employee were somewhat lower for both periods. Part of the increased average compensation per employee is attributable to changes in the proportions of the various classes of employees.

Increasing business activity also is reflected in the revenues of the motor carriers, and there has been improvement in the profitability of their operations for the first half of 1941. The revenues, expenses, and net revenues of the class I motor carriers which report quarterly are given in the following table:

Revenues and expenses of class I motor carriers

Item	12 months ended June 30, 1941	Calendar year 1940	Calendar year 1939
Motor carriers of property:	*Thousands*	*Thousands*	*Thousands*
Operating revenues	$539,695	$474,544	$422,110
Total expenses	507,874	453,625	401,531
Net operating revenues	31,821	20,919	20,579
Percent expenses of revenues	94.1	95.6	95.1
Motor carriers of passengers:			
Operating revenues	168,331	153,205	144,722
Total expenses	143,191	134,463	124,178
Net operating revenues	25,140	18,742	20,544
Percent expenses of revenues	85.1	87.8	85.8

Carriers by water which reported to us show increases in operating revenues for 1940 compared with other recent years. Their operating income after taxes, however, was somewhat less for 1940 than for the preceding year, as the following summary indicates:

Revenues, expenses, and income of reporting water carriers

Item	Calendar year			
	1940	1939	1938	1937
	Thousands	*Thousands*	*Thousands*	*Thousands*
Operating revenues	$113,391	$110,551	$104,270	$108,479
Operating expenses	105,810	104,297	59,114	105,006
Operating income (after taxes)	3,340	3,780	3,120	1,053
Net income [1]	2,151	1,231	953	[2] *1,863*

[1] After addition of other income and deduction of fixed and other charges.
[2] Deficit.

Reports of the oil pipe lines continue to show very profitable results of operations, despite some rate reductions in recent years.

Revenues, expenses, and income of oil pipe lines

Item	Calendar year			
	1940	1939	1938	1937
	Thousands	*Thousands*	*Thousands*	*Thousands*
Operating revenues	$225,760	$212,466	$228,211	$248,645
Operating expenses	101,919	97,130	98,756	99,641
Operating income (after all taxes)	82,558	83,101	95,128	110,441
Net income (after fixed charges)	79,857	80,823	80,346	102,796

BOARD OF INVESTIGATION AND RESEARCH

The temporary board of investigation and research, created by part I of title III of the Transportation Act of 1940, and composed of three members appointed by the President, took office on August 22, 1941. The duties of this board were set forth in detail in our last report. Briefly, it is directed to investigate three specific matters, but also has broad authority "to investigate or consider any other matter relating to rail carriers, motor carriers, or water carriers, which it may deem important to investigate for the improvement of transportation conditions." The three specified matters are of large public importance, relating, as they do, to the relative economy and fitness of the three types of carriers for transportation service, the extent to which they have been or are subsidized out of the public treasury, and the extent to which taxes are imposed upon them. The board is authorized "to utilize the services, information, facilities, and personnel of the various departments and agencies of the Government," insofar as this can be done without undue interference with the work and duties of the latter. We shall cooperate and collaborate with it to the extent that our own duties permit, as indeed we have done since its members took office.

PROCEDURE

On January 22, 1941, the Attorney General's Committee on Administrative Procedure submitted its conclusions and recommendations for improvement of the practice of the Federal administrative agencies, which were immediately transmitted to the Congress and the agencies affected. The committee made few specific recommendations as to the improvement of our procedure. It recommended amendment of our rules of practice so that the filing of answers should be at the defendant's election, or, alternatively, that we might give meaning to the "default" which follows failure to file an answer, and more strictly enforce the requirement of the rules that answers must be so drawn as to advise the parties and the Commission of the nature of the defense. The committee found room for improvement in our proposed reports and final reports with respect to the clarity of findings of fact. It was of the opinion that we had unduly limited our own power to take official notice of facts within our special cognizance. It suggested that the work of our Bureau of Informal Cases (which was said to have been "highly effective in achieving economies of time and money") might be made more effective if that bureau should undertake the mediation of cases through oral conferences. A suggestion of the committee that "no effort is made to encourage the consideration of cases on the informal

docket when the complainant has in the first instance filed a formal complaint concerning a rate matter," we regard as incorrect, for our policy and practice is the reverse of that stated.

The committee referred us to its general recommendations, with particular attention to the chapters of its report relating to the utilization of prehearing conferences, stipulations, and written evidence.

The recommendations of the Attorney General's committee will receive the careful consideration which they merit in connection with the pending studies looking to the revision of our rules of practice, as hereinafter outlined.

The committee submitted a draft of bill to effectuate its general recommendations, which was introduced in both the House and the Senate. A minority of the committee expressed somewhat divergent views from those in the majority report, and submitted a draft of bill which was likewise introduced in the House and the Senate. Hearings upon these bills, Senate Bills No. 675 and No. 674, respectively, and also upon a bill known as Senate Bill No. 918, were conducted before a subcommittee of the Senate Committee on the Judiciary. At these hearings, we took the position that any general legislation governing the procedure of the administrative agencies, if made applicable to this Commission in common with other similar agencies, should be workable, and that each of the three bills under consideration would seriously embarrass the conduct of our work unless materially amended. We suggested numerous amendments which we deemed essential, but we made no request to be exempted from the general provisions of any legislation of this character which Congress might enact.

Representatives of the Association of Interstate Commerce Commission Practitioners, of associations of rail carriers and motor carriers, organized shippers, and individual members of our bar also appeared before the committee at a later stage of the hearings. While our suggested amendments were generally approved by all of these representatives, they took the position that the public interest required exclusion, rather than inclusion, of this Commission from the scope of any of the pending bills.

It is understood that no report has been made by the subcommittee to the Committee on the Judiciary. No action has been taken upon the similar bills in the House of Representatives.

REVISION OF RULES OF PRACTICE

The Transportation Act of 1940 in material ways amended the existing interstate-commerce law and also brought within our jurisdiction additional types of carrier service. Following the enactment of that act, there was generally expressed the view that a revision

of the rules of practice before the Commission would be necessitated by that legislation. The last preceding general revision became effective April 1, 1936. It was necessary to supplement these rules by special instructions and special rules of practice and rules governing joint-board procedure under the Motor Carrier Act, 1935, or part II of the Interstate Commerce Act. Special instructions supplementing the general rules are issued in certain classes of cases, commonly referred to as "finance" cases.

Our appropriate committee has given a great deal of consideration to this subject. At our request the Association of Interstate Commerce Commission Practitioners appointed a special committee of its members for the purpose of conferring with our committee and cooperating in the draft of the revised code of practice rules.

With the aid and cooperation of the special committee of our practitioners, a tentative draft of a proposed revision has been brought close to completion. The agreement reached between our committee and the practitioners, it should be stated, is only as respects the desirability of submitting the draft to the Commission, with the understanding that the draft will itself be the subject of later open discussion at which all concerned may voice their criticisms.

In the meantime the Commission is operating under the same code of practice rules that it adopted, effective April 1, 1936, with the supplements already indicated. Although these rules are somewhat scattered and seem to lack a formal literary unity, in the main they seem to be upon a generally sound basis, and those who have occasion to refer to them experience little trouble because of the manner in which they are arranged.

It will be necessary for us to consider certain questions, which may be indicated. Whether the existing rules shall be merely amended, or a new code devised, is the primary question. If a complete revision is to be made, then the matter of arrangement becomes important—that is, the question of whether the existing rule numbers shall be maintained as far as possible, or a radical departure, such as the use of a decimal system or specifications of the Federal Register, shall be followed. A question will arise as to the scope of the rules; that is, whether they shall be of a broad and general character, leaving the details of the various special types of procedures to be developed, as in the past, by special instructions, or all instructions shall be merged into a comprehensive code.

Suggestions have been made that the rules of practice shall attempt to state generally the applicable rules of evidence, including official notice. If it shall be attempted to do more than merely regulate procedural steps in the production of evidence, serious questions arise

as to the right of the Commission to alter or to refuse to follow the substantive and fundamental rules of evidence.

The Attorney General's Committee on Administrative Procedure and many of our practitioners have urged that we follow a procedural system which will make greater use of informal methods of proof, such as affidavits, the reception of professional statements of counsel, and recourse to public documents and matters within our own files. It has also been suggested that the rules make provision for proceedings in the nature of discovery and for calling upon adverse parties to admit the validity of certain documents or statements of fact without further proof.

The greater use of the prehearing conference is stressed as desirable. As far as the courts are concerned this is a comparatively recent device, at least in its modern form, and many claims are made as to successes when the plan has been carefully employed in the courts. The issues before us, however, are generally not of a character similar to those which find their way into the courts. In the class of cases where the results of a successful prehearing conference would be most useful, the issues are likely to be complex and the parties very numerous and scattered, and the public rights are generally so concerned that it may be expected that numerous interveners will come in who are not parties to the proceeding at the stage at which the prehearing conference is usually held.

The Attorney General's Committee on Administrative Procedure and the underlying monograph have both indicated the desirability of further experimentation with the so-called modified-procedure plan which was described in our annual report for 1924 at page 7.

We have indicated some of the main points which, it is to be expected, will be presented actively for consideration when the proposed revision is made public and subjected to criticism.

ORGANIZATION CHANGES

A number of changes have been made in our organization schedule, largely as a result of the enactment of the Transportation Act of 1940 and certain other legislation, as well as for the purpose of promoting efficient administration. The most important of these have been the assignment to division 2 of proceedings in which the issues relate primarily and predominantly to the interpretation or application of tariffs, and to division 3 of so-called shortened-procedure cases other than those involving tariff interpretation or application.

DELEGATION OF AUTHORITY

So great is the volume of business to be transacted by a Federal administrative agency like the Commission that extensive delegation

of authority is an obvious necessity. In the report of the Attorney General's Committee on Administrative Procedure, which was submitted to Congress on January 24, 1941, this subject is discussed ably and well at pages 20–24 under the heading: "A Consequence of the Characteristics of Administrative Agencies—The Need for Delegation." It is a matter which has become of increasing importance to the Commission with the great enlargement of its duties which has followed the enactment of parts II and III of the Interstate Commerce Act and section 77 of the Bankruptcy Act, to say nothing of other legislation of lesser scope. More and more it is becoming difficult for the members of the Commission to avoid becoming buried in an avalanche of detail and to find time for the thorough study and constructive thought which ought to be given to the major issues which come before it.

In this respect the Transportation Act of 1940 did the Commission a disservice rather than a service. In 1933, by an amendment to section 17 of the act, it was given authority to delegate work, business, and functions to individual Commissioners or boards of employees, subject to petitions for reconsideration or rehearing by the Commission or a division thereof; but this authority was subject to the restriction that the—

> authority shall not extend to investigations instituted upon the Commission's own motion nor, without the consent of the parties thereto, to contested proceedings involving the taking of testimony at a public hearing.

In a report, dated March 20, 1939, to the chairman of the House Committee on Interstate and Foreign Commerce on the legislation which ultimately resulted in the Transportation Act of 1940, we recommended that this restriction be removed, particularly in view of the great burden of work which had been imposed upon us by motor-carrier regulation and which would be augmented by the contemplated water-carrier regulation.

While the restriction was removed by the Transportation Act of 1940, section 17 was otherwise amended in a way to impair the authority to delegate, so that the net result was adverse rather than beneficial. Paragraph (5) of the amended section is now as follows:

> (5) Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under part II, persons specified in section 205 (e)), who may file exceptions thereto, but if within twenty days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed

or postponed by the Commission or by a duly designated division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof.

The effect of this is that any individual Commissioner or board of employees to whom a matter is assigned which involves the taking of testimony at a public hearing must file a proposed report and recommended order. In the event that exceptions are filed or the order is stayed, final action must be taken by the Commission or a division thereof and cannot be taken by the individual Commissioner or board of employees to whom the matter was originally assigned. Only in the event that no exceptions are filed and the order is not stayed is the Commission or some division thereof relieved from the duty of acting upon the matter, and even in that event it must consider the recommended order for the purpose of determining whether or not it should be stayed.

The effect of this amendment may be illustrated by a situation which developed in connection with our motor-carrier regulation. Owing especially to the immense volume of work incident to passing upon the thousands of applications under the so-called "grandfather" clauses of part II, a large number of cases had accumulated in which proposed reports and recommended orders of joint boards or examiners had been filed, but no final action had been taken because of exceptions or stays. Not long before the enactment of the Transportation Act of 1940 and under the then existing section 17, which contained the restriction above quoted, we asked the parties to many of these cases whether they would consent to decision by a board of employees acting under delegated authority. In a majority of the cases such consent was given. We also directed the joint boards and examiners to whom were assigned for hearing cases which had not yet progressed to the hearing stage to inquire of the parties upon the opening of the hearing whether they would consent to decision by such a board of employees. In about 95 percent of the cases where this inquiry was made, the consent was given.

Before this plan, contemplating action by a board of employees under delegated authority, could become fully effective, the Transportation Act of 1940, with its amendments of section 17, was approved. Thereupon it became necessary to abandon the plan. Under paragraph (5) of that section, as it now stands, the individual Commissioner or board of employees to whom a case is delegated has no status superior to that of a joint board or examiner to whom a case is referred for hearing under part II. Such a board or examiner can decide the case only in the event that no exceptions are filed or his recommended order is not otherwise stayed. In the event of

exceptions or a stay, the case must be decided by the Commission or a division thereof.

We believe that the individual Commissioner or board of employees to whom a proceeding is delegated should have the same authority to decide it initially that the Commission or a division thereof would have if there were no such delegation. The right which section 17 gives the parties to a proceeding to file petitions for rehearing or reconsideration which must be passed upon by the Commission or a duly constituted appellate division thereof affords sufficient protection against ill-considered decisions by an individual Commissioner or a board of employees. It must be borne in mind, also, that the Commission would exercise discretion in determining what types of cases might appropriately be delegated to an individual Commissioner or such a board for decision.

There are other provisions of the amended section 17 which might well be reconsidered. By the authority given us in 1933, we could delegate work, business, or functions to a "board composed of an employee or employees of the Commission." Under the present paragraph (2), the board must be "composed of three or more eligible employees," and those eligible are limited to "examiners, directors, or assistant directors of bureaus, chiefs of sections, and attorneys." Our directors are men of eminent ability and extensive experience. If we select such a man to serve on a board, it should not be necessary to check his judgment by adding two other directors or two subordinate employees. Furthermore, in our rate work we now have as staff adjuncts a suspension board, a released-rates board, a sixth-section board, and a fourth-section board. The employees of these boards are not in general designated as examiners, attorneys, section chiefs, directors, or assistant directors. Yet they are men of long and wide experience in rate work and might well be selected to serve on a board of employees with delegated authority to decide certain classes of rate cases initially. We know of no good reason why our choice should be circumscribed so that they cannot thus be selected. The make-up of these boards of employees may well, we believe, be left to the discretion of the Commission, inasmuch as we are to be responsible for the results.

Paragraph (6) provides that where, because no exceptions have been filed or there has been no stay, a recommended order of an individual Commissioner or a board of employees has become the order of the Commission, and where a petition for rehearing, reargument, or reconsideration has been filed within 20 days thereafter, an appellate division "shall reconsider the matter either upon the same record or after a further hearing," regardless of the merits of the petition. This militates strongly against the usefulness of

the power of delegation. We know of no good reason why the appellate division should not have the usual power to deny the petition, if it is found to have no merit.

Paragraph (8) provides for the automatic stay of the decision, order, or requirement of a division, individual Commissioner, or board of employees which has not yet become effective, if an application for rehearing, reargument, or reconsideration is made, regardless of the merits of the application. There was no such provision prior to the amendments of 1940, and in our opinion it is a backward step, as it makes it a tactical advantage for a party who has lost his case before even a division of the Commission to seek rehearing, reargument, or reconsideration before the order becomes effective, and thereby to stay or postpone it.

Paragraph (9), by the last three words thereof, "but not otherwise," forces a party who is dissatisfied with a decision to pursue all of the remedies for rehearing or reconsideration before going into court. This inevitably increases the burden at the top of the agency. The former rule was that it was a matter of judicial discretion whether the aggrieved party should be required to exhaust all administrative remedies before going into court against an order of the Commission. *United States* v. *Abilene & S. Ry. Co.*, 265 U. S. 274.

PIPE LINES

Sixty-six pipe-line companies filed reports with the Commission for the year 1940, an increase of 3 companies over the year 1939. The combined mileage of the pipe lines operated by these companies during the year was 40,300 miles of gathering lines and 59,856 miles of trunk lines. These totals represent increases of 727 miles of gathering lines and 748 miles of trunk lines over the combined mileages operated by the 63 companies which filed reports for 1939. There were transported during the year 886,352,568 barrels of crude oil and 71,950,122 barrels of refined oil, or a total of 958,302,690 barrels of oil which originated on the lines of the reporting companies. These totals represent increases of 83,524,657 barrels of crude oil and 1,797,813 barrels of refined oil, or a total increase of 85,322,470 barrels over the amount transported by the companies reporting for 1939.

Information which has been brought to our notice indicates that certain pipe lines engaged in the transportation of petroleum or its products which do not file their rates with or report to us as common carriers may be subject to the provisions of the Interstate Commerce Act. Inquiries are under way as to the facts, upon the basis of which any warranted action may be taken.

In our last annual report we referred to the investigation carried on our docket as No. 26570, Reduced Pipe Line Rates and Gathering Charges. By our report in that proceeding, December 23, 1940, 243 I. C. C. 115, we found that the rates and charges and the regulations as to minimum tenders for shipments maintained by certain of the respondents were excessive and unreasonable as they affected the interstate transportation of crude petroleum oil by pipe line. We entered an order requiring these respondents, or their successors in operation appearing in the proceeding, to show cause within 60 days why we should not proceed with the entry of an order requiring the readjustment by them of their bases of rates by reductions equal to certain specified percentages of their respective transportation revenues, to be applied equally to their rates severally filed for interstate application. There was no similar finding as to the remaining respondents. We also required all the respondents to show cause why an order should not be entered making effective minimum-tender requirements of not more than 10,000 barrels for a single shipment.

Within the allotted period, certain respondents filed motions in the way of an answer to the show-cause order, asking to be dismissed as respondents. The question of whether these motions should be granted seemed to us to require further investigation as to the facts. A large number of other respondents made response, either directly or through their successors. In general, the returns challenged the propriety of making any requirement for changes in rates based upon the record before us, because of alleged changes in property values and volume of traffic and increased expenses. Some of the respondents appeared to have made reductions in their rates greater in amount than those suggested in the report.

All respondents which maintained fixed minimum-tender requirements filed returns and questioned the imposition of the minimum tender suggested.

There were numerous requests for further hearing for the purpose of bringing the record down to date as to property used in transportation service and as to changes in traffic and financial conditions. A review of these returns indicated to us the desirability of supplementing the record already made in the respects mentioned and of withholding an order based upon the existing record until the further hearing was held. We therefore have reopened the proceeding for further hearing.

The investigation hereinbefore referred to involves as respondents only those pipe-line carriers which made reductions in their rates at or about the time the proceeding was instituted. It relates only to the rates and practices of those respondents as respects the transportation of crude petroleum oil.

In *Petroleum Rail Shippers' Assn.* v. *Alton & S. R.*, 243 I. C. C. 589, we had under consideration, among other things, the rates and minimum-tender requirements of Great Lakes Pipe Line Company and Phillips Petroleum Company for transportation of refined petroleum products and natural gasoline from origins in Oklahoma and Texas to their terminals in western trunk-line territory. The local rates of these carriers were the equivalent of the rail rates between the same points. Upon the basis of a cost study, we found these rates to be unreasonable and required very material reductions.

With respect to minimum-tender requirements, we found that the existing requirements of 25,000 barrels are reasonable when normal transportation service is demanded; but that—

> a reasonable minimum-tender when gasoline or kerosene is offered for transportation subject to delay until defendants have accumulated at that receiving point 25,000 barrels of the same specifications from the same or other shippers, is and for the future will be 5,000 barrels, and that any greater minimum-tender requirement when so offered subject to delay is and for the future will be unreasonable, but that the time during which such shipments are thus necessarily stored at origin shall be deducted from the storage time now allowed at destination without additional charge and that the storage time at destination without additional charge shall be correspondingly reduced.

On July 30, 1941, the President approved the so-called Cole Act, entitled: "An Act To Facilitate the Construction, Extension, or Completion of Interstate Petroleum Pipe Lines Related to National Defense, and To Promote Interstate Commerce" (Public, No. 197, 77th Cong., ch. 333, 1st sess.). So far as our duties are concerned, the provisions of section 8 of that act are significant:

> (a) Any pipe line with respect to which an advance is made or the right of eminent domain is exercised, under authority of this Act, shall be constructed, extended, or completed, and operated and maintained, subject to such terms and conditions as the President may prescribe as necessary for national-defense purposes.
>
> (b) Nothing in this Act shall operate to relieve any person, operating any pipe line, from any duty or liability to which such person may be subject under the provisions of the Interstate Commerce Act, including all Acts amendatory thereof or supplemental thereto, or the Natural Gas Act, except that the President is authorized to relieve any person, operating any pipe line with respect to which an advance is made or the right of eminent domain is exercised, under authority of this Act, from any duty or liability under either of such Acts to such extent as he may deem advisable for national-defense purposes.

The President has certified that certain pipe lines for transportation or distribution of petroleum or petroleum products are necessary for national-defense purposes. (See Federal Register, vol. 6, pp. 4429, 4583, 5081.) Those pipe lines will be "constructed, completed, operated, and maintained subject to such terms and conditions as the President may hereafter from time to time prescribe as necessary for national-defense purposes." To what extent they will be relieved

from the duties and liabilities of the Interstate Commerce Act, the Elkins Act, and other supplemental and amendatory acts remains to be determined by the President.

The pipe-line system of the nation has assumed a greater degree of importance during the preceding year than ever before. With the diversion to Great Britain and her allies of a large number of tankers from service which formerly formed the chief means for transport of crude petroleum to refineries upon the two coasts, and of large quantities of refined petroleum products, the principal refiners upon the two coasts and other users of petroleum products have been forced to utilize the pipe lines and rail facilities to an extent not approached since the advent of the modern ocean-going tanker vessel. As respects pipe lines, there have been two major obstacles to extension of the system quickly so as to carry the strain of added available traffic, namely, opposition locally or of competitive transport systems, which has made difficult the securing of necessary rights-of-way, and the shortage of materials for construction resulting from the assignment of relative priorities during the unlimited national emergency. Even if these difficulties did not exist, it takes time to construct pipe lines, and time, money, and priorities are necessary for adaptation of the existing system to a wider use in common-carrier service, for the existing system has been in fact, if not in contemplation of law, built largely as a series of plant facilities.

The continued extension of the systems of pipe lines transporting products of petroleum, especially gasoline, has brought about marked changes in our national transportation economy. By changing the points of concentration for distribution, the gasoline pipe line has brought about many new problems, both of competition with other carriers and of association of the producers and pipe lines with carriers of other types, "friendly" or affiliated, as well as those distinctly independent.

Competition between the different types of carriers within our jurisdiction has become more acute in the struggle for traffic in petroleum and its products. This has manifested itself in widespread rate reductions of uneven amount made for the purpose of inducing changes in the movement of the available traffic. The threat of a producer of crude or refined petroleum to construct its own pipe line if not accorded rates which satisfy the producer in its competition with other producers has been sufficient to bring about marked rate reductions upon the rails and often has been the signal for other reductions of a retaliatory or protective nature. Similarly, the threat of the producer-owned truck has had a markedly depressing effect upon the going rates of rail carriers, motor carriers, and water carriers alike. If the conditions attendant upon the present national emergency do

not halt this type of competition, it will be difficult to maintain a fair and relatively equal rate structure for any of these forms of carriers.

REGULATION OF WATER CARRIERS

The Transportation Act of 1940 was approved on September 18, 1940, but the provisions of part III of the Interstate Commerce Act, which it brought into being and which extended our regulatory authority over water carriers, became effective only in minor part on that date. The important provisions with respect to the granting of certificates of public convenience and necessity to common carriers by water and of permits to contract carriers did not become effective until February 1, 1941, and the equally important provisions with respect to the regulation of rates and charges did not become effective until March 1, 1941. The time for filing applications for certificates or permits covering operations within the scope of the so-called "grandfather" and "interim" provisions of section 309 did not expire until June 2, 1941. In the meantime, numerous claims for exemption under the various exemption clauses of sections 302 and 303 had been filed. Until all of these applications and claims have been passed upon we shall not know accurately the extent of our jurisdiction over water-carrier operations. The administration of part III is, therefore, still in the preliminary and formative stage.

In our last report we stated that, for reasons outlined, we had decided that the administrative work under part III could largely be handled through existing bureaus by appropriate expansion of their activities, but that we were creating one new bureau, called the Bureau of Water Carriers, to be charged with specific administrative duties. We stated our intention to secure for that bureau the services of one or more men of extensive practical experience in the conduct of water-carrier affairs who would be available to the Commission and its staff in an advisory capacity, where intimate knowledge of water carriers and their operations and methods of doing business would be of value. This intention was carried out in the selection of the director and the assistant director. The manner of organization of the bureau and its duties and activities since organization are described herein under the heading "Bureau of Water Carriers."

Every effort has been made in inaugurating and carrying on the water-carrier work to maintain close contact with the various groups of water carriers and to give them full opportunity to express their views upon proposed rules, regulations, and methods of administration prior to their adoption. The cooperation which they have given us has been all that could be desired, and they have in general mani-

fested a disposition to do their part in making the new regulatory provisions effective.

SIZES AND WEIGHT INVESTIGATION

Our report in this proceeding (Ex Parte No. MC–15), made pursuant to the provisions of section 226 of the Interstate Commerce Act, was transmitted to Congress in August, together with the staff report on which it was based. Both reports were ordered printed and have appeared as House Document No. 354 (77th Cong., 1st sess.). Identical bills have been introduced in the Senate and House (S. 2015 and H. R. 5949) intended to carry out our recommendations.

Our investigation of this subject caused us to find that there are wide and inconsistent variations in the limitations imposed by the several States; that the limitations imposed by a single State may have far-reaching effects on interstate commerce; that with respect to the highways which serve as the principal arteries of interstate commerce, State limitations may be, and to a considerable extent probably are, less liberal than is necessary for the proper protection of the highways and of the public safety; that where such conditions exist, the limitations operate as an obstacle to the flow of interstate traffic, render motor transportation more costly, and result in an impairment of service to the public; and that these conditions create a need for Federal intervention. We also found that considerations affecting public safety in the use of the highways do not in themselves create a need for Federal intervention, but are factors which should influence the character and extent of any such intervention. We further found that Federal intervention, within limits, would not be unconstitutional, but that it should be confined within comparatively narrow limits and be resorted to only in particular cases and upon clear proof that an unreasonable obstruction to interstate commerce exists.

The problems to be faced in the regulation of the sizes and weights of motor vehicles are an intimate part of the entire problem of transport regulation and require administrative determination in the light of the facts of given situations as they are related to the legislative standards. These problems also require technical knowledge of roads and experience in building and maintaining roads. We accordingly recommended to Congress that we be authorized to entertain complaints, filed by a responsible party, against a State or political subdivision thereof attacking its limitations as they apply generally or to a particular location, that we be empowered to fix size and weight standards, as need arises, and that we be authorized

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to obtain and give appropriate consideration to a technical report from the Public Roads Administration respecting the facts involved in a particular complaint and from the highway department of the State concerned. Provision for emergency adjustments of any limitation we may prescribe also was recommended. State limitations would continue to apply insofar as they are not superseded by action on our part. Enforcement of Federal regulation, it was added, should, to the extent possible, be concurrently conducted by Federal and State agencies.

MOTOR CARRIER INTEGRATION

In our last annual report we discussed this general subject and called attention, in particular, to a series of applications then pending before us filed by The Transport Company of New York. Authority was sought to acquire control of 48 corporations, 27 of which were motor carriers of property and 8 of which were so-called truck-rental companies whose business consists of renting trucks and passenger cars to individuals and business concerns. The other corporations were subsidiaries, largely warehousing or terminal companies. All told, they employed some 9,700 persons and owned more than 10,600 units of equipment. The carriers involved, taken collectively, operated over a network of regular routes covering the principal points in Massachusetts, Rhode Island, Connecticut, New York, eastern Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, and North Carolina, and over routes extending from points in this area to Cleveland, Ohio, Pittsburgh, Pa., Bluefield, W. Va., Nashville and Chattanooga, Tenn., New Orleans, La., and Pensacola, Fla., via Atlanta, Ga., and Montgomery, Ala., and to Columbia and Florence, S. C.

In *Transport Co.—Control—Arrow Carrier Corp.*, 36 M. C. C. 61, we denied these applications. Among other things, it was found that acquisition by applicant of control of the carriers in question would not result in improvements in service or reduction in cost sufficient to justify approval under the terms and conditions proposed, and that acquisition of control of the truck-rental companies would afford opportunity for unjust discrimination, unfair competitive practices, and other violations of law, and would not be consistent with the public interest. While it appeared that substantial motor-carrier competition would remain between most cities in the New England and middle Atlantic regions, doubt was expressed as to whether adequate competition would remain on traffic moving between the southern region and points north of Baltimore. It was also found that maintenance under the conditions proposed by applicant of multiple-carrier corporations authorized to engage in substantially

duplicate operations and to be controlled by applicant through stock ownership would be uneconomical and contrary to the public interest; and that proposed contracts providing for future employment of certain principal officers of the carriers in question would unnecessarily increase their general expenses, impede future organizational flexibility, and be contrary to the public interest.

Special attention was given to the consideration proposed to be paid by applicant to vendors, and it was found to be excessive and in other respects unreasonable and unjustified. This general comment was made:

> We believe that unifications of motor carriers are more likely to be on a sound basis, and the prospects of ultimate success improved, if they be brought about through the initiative of and negotiations between the carriers involved, or between persons financially interested in such carriers who retain a substantial interest in the enterprise, without the use of holding-company devices or the intervention of promoters, particularly where such intervention would substantially increase ultimate costs.

The attempt to bring all of these motor carriers and related companies under common control has not been renewed. However, the unification on a smaller scale of some of them has been undertaken, and applications which, if granted, would permit of such a unification are now pending before us. In this proceeding the Department of Justice has intervened, apparently in opposition and upon the ground that the unification might result in a reduction of motor-carrier competition contrary to the public interest.

While we have, during the year, approved numerous purchases of motor-carrier properties, consolidations, acquisitions of control, and similar transactions resulting in the unification of motor carriers, none of these has been of major importance. The only proposals to integrate motor-carrier operations on a large scale have been those above discussed.

STUDY OF DRIVER FATIGUE

Our last annual report stated that we had received the report of the United States Public Health Service on the investigation of driver fatigue which it had made at our request and that this report was being printed as a bulletin of the Public Health Service. We released this report, with a foreword by our chairman, in June of this year.

This investigation was in many respects a pioneering effort and substantially the first in which commercial drivers have been tested in their day-to-day environment. Before the investigation was instituted, we stated, in *Maximum Hours of Service of Motor Carrier Employees*, 3 M. C. C. 665, 670:

> The findings will not, obviously, permit of precise determination of a period at which fatigue becomes a potentially serious factor in accidents. They will,

however, undoubtedly prove a valuable aid to judgment, along with the close analyses of accident experience which we and other agencies will make.

Measurements were effected which showed a decline in functional efficiency as the daily hours of driving increase. As was anticipated, the report does not undertake to state what number of hours constitute a safe daily driving period for the average driver. As the chairman pointed out in his foreword, "a given decline in efficiency cannot be translated into a given increase in the likelihood that drivers will have accidents." Further investigation, it was stated, is required "to establish standards of reference by means of which more precise interpretations can be placed upon the conclusions of the report." To this end and for other purposes, it was indicated that a detailed statistical analysis of our accident reports and related data had been undertaken. This analysis has been interrupted by other work, but it is anticipated that it can be resumed in the near future.

A copy of the report has been placed in the records in Ex Parte Nos. MC–2 and MC–3 without holding a hearing for that purpose. It was indicated, however, that if any party to one or the other of these proceedings desired a hearing for the purpose of considering the report and for other related purposes, he could so petition us, and that any such petition would be given appropriate consideration. No such petition has been received.

FREIGHT FORWARDING COMPANIES

In our last two annual reports we commented on the fact that in *Acme Fast Freight, Inc., Common Carrier Application*, 17 M. C. C. 549, decided July 24, 1939, after finding that forwarding companies in their relations to the railroads and motor carriers subject to our jurisdiction were shippers not subject to the provisions of the act, we found that the act prohibits joint rates between such motor carriers and forwarding companies which do not conduct motor-vehicle operations. We issued an order, since sustained by the courts, requiring tariffs of the Acme Fast Freight, Inc., and its affiliated companies purporting to publish such joint rates to be rejected and stricken from our files. In *Tariffs of Forwarding Companies*, 23 M. C. C. 95, decided May 7, 1940, a like order was entered requiring similar tariffs of 32 additional forwarding companies to be rejected and stricken from our files. Because of pending legislation relating to forwarding companies, however, the effective date of those orders has been repeatedly postponed and is now January 15, 1942.

At the last two sessions of Congress, several bills were introduced with the object of giving us regulatory powers over freight forwarders. Certain of these bills were considered under Senate Reso-

lution No. 146, and at the last complete session of Congress extensive hearings were held before a subcommittee of the Senate Committee on Interstate Commerce. On September 30, 1940, the House approved House Bill No. 10398, designed "To amend Part II of the Interstate Commerce Act, as amended, so as to make certain provisions thereof applicable to freight forwarders," but no corresponding action was taken by the Senate, and the session closed without legislation on this subject.

In the present session, on March 24, 1941, the Senate approved Senate Bill No. 210, "to provide for the regulation of freight forwarders." Commencing on March 12, 1941, extensive hearings were held on House Bill No. 3684 (S. 210) before the House Committee on Interstate and Foreign Commerce. On August 13, 1941, that bill, with important changes, was reported to the Committee of the Whole House, accompanied by a report of the House committee, No. 1172, embodying a comprehensive discussion of the provisions of the bill and their purposes. At the close of the period covered by this annual report, the bill had been approved by the House, but a conference committee for the consideration of the two bills had not as yet been appointed. Both the bill approved by the Senate and the bill approved by the House provide for a part IV of the Interstate Commerce Act devoted to regulation by this Commission of freight forwarders. If this proposed legislation is enacted our duties will again be substantially enlarged.

PROTECTIVE SERVICE AND CAR-OWNING COMPANIES

By the Transportation Act of 1940, section 1 (14) of the Interstate Commerce Act was amended by designating the then existing provisions, with certain modifications, paragraph (a) and adding a new paragraph (b). The modifications of the original wording consisted of additions which are italicized in the following excerpt from what is now paragraph (a):

> including the compensation to be paid *and other terms of any contract, agreement, or arrangement* for the use of any locomotive, car, or other vehicle not owned by the carrier using it (*and whether or not owned by another carrier*)

This clarified and extended our power to prescribe the terms of any such contract, agreement, or arrangement.

The new paragraph (b) made it unlawful for any railroad or express company—

> to make or enter into any contract, agreement, or arrangement with any persor for the furnishing to or on behalf of such carrier or express company of protective service against heat or cold to property transported or to be transported in interstate or foreign commerce, or for any such carrier or express company to continue after April 1, 1941, as a party to any such contract, agreement, or arrangement

unless and until it had been approved by us as "just, reasonable, and consistent with the public interest." We were permitted to extend the date named to October 1, 1941, and it was so extended.

Section 20 of the act was also amended to give us full access to and authority over the "accounts, books, records, memoranda, correspondence, and other documents" of such persons "which furnish cars or protective service against heat or cold to or on behalf of any carrier by railroad or express company subject to this part."

The Commission instituted, in Ex Parte No. 137, an investigation into contracts for protective service, pursuant to section 1 (14) (b) above described. In *Contracts for Protective Services*, 246 I. C. C. 145, decided July 31, 1941, division 3, to which the proceeding had been assigned for disposition, found that the contracts should be governed by the following broad principles:

1. The railroads should retain the revenues which they receive from the protective-service charges which the shippers pay. The railroads are responsible for the provision of this service and properly publish the tariffs which name the charges. To the extent that the latter are the joint charges of two or more railroads, they should be divided after the manner of joint rates, that is to say, by agreement subject to the supervisory authority of this Commission. The charges have for the most part been prescribed by us and were based on cost ascertainments, including costs incurred directly by the railroads and costs incurred by the car-line companies. They were liberally computed, however, and no doubt in many instances exceed the aggregate of specific costs. So far as there may be such an excess, clearly it should go to the railroads and not to the car-line companies, and it is equally clear that any deficit under costs should be borne by the railroads.

2. The car-line companies should bill each individual railroad for the services which it renders to it, on the basis of cost plus a reasonable profit. Profit will, of course, fluctuate with volume of traffic. The aim should be to realize, under normal conditions, about 6 percent on the fair value of the property. It is recognized, also, that it will be necessary, for practical purposes, to arrive at the costs to some extent by an averaging process, without meticulous regard for individual conditions.

3. If the car-line companies are compensated in the manner indicated in paragraph 2 above, and if it be assumed that they receive no more than reasonable car rentals, they will have no funds out of which they can make payments such as the Pacific Fruit Express Company now makes, apart from dividends, to its proprietary railroads, and there is in general no sound basis for such payments, [footnote reference omitted] which to a great extent are made by no other car-line company. If the railroads retain the revenue from the protective-service charges and if these charges and the freight rates on the perishable traffic as well, so far as they are joint, are divided in due recognition of all that is done with respect to this traffic by the initiating railroads, as compared with the intermediate and delivering carriers, the Southern Pacific and the Union Pacific will receive ample compensation for the services described in section 11 of the contract.

4. In view of the distinction made in section 1 (14) of part I of the act between "car service" payments and "protective service" payments, it would be well for the railroads to make separate contracts for these two forms of service or, in any

event, to deal separately with them in a single contract, so that the charges for protective service may be clearly segregated from other charges. If, also, as was indicated in the statement quoted above from *Refrigeration Charges on Fruits, etc., from the South, supra,* [151 I. C. C. 649, 692–3] the railroads employ a car-line company for services which relate to the transportation of the perishable traffic rather than to the accessorial protective service, charges for such transportation services should be clearly segregated in the contract.

Of the 188 contracts which were before the division for consideration, 6 were approved, 88 were found not to be within the scope of the proceeding or were disapproved, and 9 were held for further consideration prior to October 1, 1941. The remaining 85 included all those of major importance and were chiefly between the railroads and the so-called car-line companies which are owned and controlled by railroads, these being, in the order of their size, the Pacific Fruit Express Company, the Fruit Growers Express Company, the American Refrigerator Transit Company, the Merchants Despatch Transportation Company, the Western Fruit Express Company, and the Burlington Refrigerator Express Company. The division was unable to approve any of these 85 contracts as consistent with the public interest for further indefinite use, but stated that if the respective respondents would promptly submit modifying supplements which by their terms would terminate the existing contracts as of June 30, 1942, insofar as they related to protective service, and at the same time undertake to file with us on or before January 1, 1942, new contracts covering protective service, effective July 1, 1942, which would be in accord with the above-quoted principles, it would approve the existing contracts as so modified in order that respondents might not be without lawful means of furnishing protective service after October 1, 1941.

In a report on further consideration, decided October 1, 1941, 80 additional contracts, thus supplemented, were approved. The new contracts, to be filed January 1, 1942, and to become effective July 1, 1942, will be subjected to thorough detailed analysis prior to any approval.

We have as yet instituted no proceeding under section 1 (14) (a). So far as accounts and records are concerned, it appears that upwards of 500 companies own cars of special types which are used in railroad service, many of these being large industrial companies in which the ownership of such cars is merely incidental to their general operations. Thirty-three companies own refrigerator cars, but of these only the 6 railroad-controlled companies above listed furnish protective service. For the latter it will clearly be necessary to prescribe classifications of accounts, and these are in process of formulation. The extent to which it will appear desirable, in our discretion, to prescribe accounting regulations for the other car-owning companies remains to be determined.

CLASS RATE AND CLASSIFICATION INVESTIGATIONS

In our last report we described the actions taken in pursuance of the orders of investigation in these proceedings, and referred to the fact that studies dealing with various aspects of the investigations were being made by members of our staff for introduction into the record. The studies were completed and were received in evidence at a formal hearing before division 2 in St. Louis, Mo., in July, and are entitled as follows:

1. Distribution of the Natural Resources of the United States by Freight Rate Territories.
2. Railroad Freight Service Costs in the Various Rate Territories 1939, Including Cost Scales by Territories and Types of Equipment.
3. Progression in Freight Rate Mileage Scales Prescribed by the Commission.
4. Some Suggestions for Improvements in Railroad Class Rates.

The staff members who prepared those studies were presented as witnesses at that hearing. They explained the studies and were cross-examined with respect thereto by respondents and others appearing for State commissions and shipper interests. No evidence, other than that regarding the studies described, was received at the July hearing.

Permission sought at the hearing to examine the underlying data on which the cost study is based was given later. In the early fall, representatives of respondents and other interests examined the data at our office in Washington.

During the year a number of petitions seeking restriction of the issues, and others praying discontinuance or indefinite postponement of the proceedings, were received, considered, and acted upon. One of them, filed during the summer by all class I railroads of the United States, and similar to several petitions filed early in the year by certain shipper interests in official, southern, and southwestern territories, prayed for the suspension of all activities in, and indefinite postponement of, the investigations concerning rail and rail-and-water rates and freight classifications, on the principal grounds that the departures from "business as usual" arising from preparations for the national defense were creating an era of instability, disturbance, and uncertainty and had resulted in conditions which afford no acceptable pattern upon which to formulate a long-time freight-rate program, and that the full time of the personnel upon whom would fall the duty of participating in these proceedings was devoted to efforts in work entailed by the national emergency. Numerous petitions in support of, and replies in opposition to, the prayers were subsequently received. After consideration of the matters presented in the petitions and replies, and of the mandate of Congress in the Transportation Act of 1940, to institute, with certain qualifications,

an investigation of which these extensive proceedings are regarded as an important part, the petitions were denied.

Additional hearings in the proceedings discussed above for the purpose of receiving evidence from respondents and others are to be held in the coming months. Until they are well in progress, it has been deemed advisable to defer the hearings in the investigations concerning motor and motor-and-water rates, and motor-freight classifications.

As mentioned in our last annual report, respondent railroads and water lines were ordered to compile and furnish certain detailed information covering all freight shipments throughout the United States. A portion of these data had been received, but doubt was raised as to the practical value of the additional information required because it would reflect the abnormal conditions of traffic during the existing national emergency rather than those likely to prevail during more normal times, because of the possible delay in the proceedings caused by the protracted time necessary to make an extensive traffic test, and because of the great expense that would be incurred. The matter was fully discussed at the Chicago prehearing conference by respondents and others interested. It was concluded later that the specified information should not be required, and an order to that effect was made.

COOPERATION OF FEDERAL AND STATE COMMISSIONS

Since our last report we have cooperated with State commissions in 10 additional proceedings involving interstate-intrastate rate relations. Of these, 5 were complaints filed with us in respect of rates in effect, 3 were investigation and suspension proceedings arising out of orders issued by us and by State commissions suspending the effective dates of rates proposed by carriers, and 2 were applications for relief from section 4 of the act. In these cases we had the cooperation of 8 different State commissions. We have also received cooperation from State commissions in 7 proceedings involving abandonment of railroad lines. In addition, joint boards of State commissioners provided for in section 205 of part II of the act functioned in numerous cases referred to in the chapter on "Bureau of Motor Carriers."

Cooperation with committees of State commissioners is planned in the following investigations instituted on our own motion: No. 28300, Class Rates Investigation, 1939; No. 28310, Consolidated Freight Classification; No. MC–C–150, Motor Freight Classification; and No. MC–C–200, Motor Carrier Class Rates Investigation, elsewhere referred to in this report.

STANDARD TIME ZONE INVESTIGATION

Under the Standard Time Act, approved March 19, 1918, as amended (U. S. C., title 15, secs. 261–265), it is made our duty by order to define the limits of each of the four standard time zones into which continental United States is divided. Our orders, which may be modified from time to time, are to be made "having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in commerce between the several States and with foreign nations." In our previous reports we have referred to the series of orders by which the zone boundaries have been defined by us.

It will be recalled that by section 2 of the Standard Time Act (15 U. S. C., sec. 262), within each zone the standard time of the zone shall govern movement of all common carriers in interstate or foreign commerce; and in all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches, or relating to the time within which any act shall or shall not be done by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed. Congress has thus made the observance of its standard time mandatory as to certain types of matters, but has not attempted to give the act the general application which would be possible for it to accord standard time under its constitutional powers as to the establishment of standards of weights and measures, the commerce clause, or the war, postal, and other powers of the Constitution. This has left the States free to use either United States standard time or any local standard which they might desire to use and make mandatory as to the matters outside the important but limited class of matters stated in section 2, as to which the United States standard is controlling. It was held in *Massachusetts State Grange* v. *Benton*, 272 U. S. 525, that there was no necessary inconsistency between State statutes for such purposes and the Federal statute; and the lower court, which was affirmed, held also that the Congress had not by the Standard Time Act occupied the field to the exclusion of State legislation respecting the vast body of daily transactions which do not come within the scope of the matters stated in section 2 (see 10 Fed. (2d) 515).

The standards of time prescribed in the act are related to the mean astronomical time of the 75th, 90th, 105th, and 120th degrees of longitude west from Greenwich. When originally enacted, the act contained a requirement that the time should be advanced 1 hour—

so-called "daylight saving"—during a specified portion of the year embracing the summer months. This requirement was repealed by the act of August 20, 1919, passed over the veto of the President, and since the last Sunday in October 1919 there has been no Federal warrant for the observance within the four zones of continental United States of any standard of time except that based upon the mean time of the specified meridian of longitude. "Daylight saving" has had no warrant in Federal law since the date specified.

Many of the States, and, in some instances, municipalities without the sanction of State laws or even in contravention thereof, have followed the plan of advancing the clock 1 hour during the summer season. There has been no uniformity as to the beginning or close of the period of advanced time. The legality of such State action, in the existing condition of Federal law, was recognized in *Massachusetts State Grange* v. *Benton*, *supra*, as applied to the classes of matters stated in the statute and referred to in the opinion of the Court.

It has not proven possible, in practice, to confine the two standards of time—Federal and State—within their respective constitutional spheres. Nor has it been possible to observe the State standards without inevitably controlling and embarrassing the observance of the Federal statutory standard as to the matters stated in section 2. Further, the exercise of the rights of the States has necessarily and invariably controlled or interfered with the standards of time observed in other States which have not taken like State action for advancing the time standard. Common carriers have governed their movements by daylight-saving time, and public officers have been governed in the performance of their acts, and have made their orders with respect to the doing of acts, by so-called "daylight saving" standards, and not by the standards prescribed by Congress. The Federal act carries no penalties for violations.

On July 15, 1941, the President transmitted to the Congress a communication, in which he recommended the enactment of a bill which would authorize him to establish daylight-saving time in such areas and for such periods of time as he deems necessary to conserve electric energy or otherwise promote the national defense. Daylight-saving time was defined as meaning such time in advance of the standard time established in section 1 of the act above cited as the President deems necessary to conserve electric energy or otherwise to promote the national defense, but not to be more than 2 hours in advance of such standard time. The draft of a proposed bill transmitted by the President carried a provision: "The daylight-saving time so established shall be the exclusive measure of time for all purposes." The bill submitted provided that the act and any

orders or proclamations issued thereunder should become inoperative 6 months after the termination of the unlimited national emergency proclaimed by the President on May 27, 1941.

With the merits and demerits of the daylight-saving plan we are not concerned, and express no opinion. Our duty is to fix the limits of the four zones under the standards prescribed for our guidance in a statute which does not provide for daylight saving, and in which the daylight-saving plan is necessarily no longer, as formerly, a part of the Federal system of standard time. We are concerned with the difficulties which have been growing year by year in attempting to meet the direction of Congress that we shall have "regard for the convenience of commerce." The conflict between the State and Federal standards has increased year by year. During a good part of the year the continental United States is further away from observance of a common standard of time than it has been at any time since 1883, when observance of the present time-zone standards became effective.

In our annual reports for several years past we have adverted to this conflict, and have recommended to Congress that it exercise its constitutional power and prescribe a standard of time which shall be, in the language of the bill submitted by the President, "the exclusive measure of time for all purposes." We renew that recommendation.

On March 21, 1941, the State of Georgia adopted eastern standard time for the entire State. Previously the State had been partly in the eastern and partly in the central zone, with the zone boundary, as fixed by us, passing through Atlanta, Macon, Perry, Americus, Albany, and Thomasville. After the State had adopted eastern time throughout, we received numerous informal complaints concerning the difficulties and confusion which resulted from the action of the State in prescribing for State purposes a standard of time differing from that provided under the Federal Standard Time Act. The city of Atlanta, Ga., and many individuals and groups of citizens located in western Georgia asked us to modify our outstanding orders so as to eliminate, if possible, the conflict in time standards, by an extension of the United States standard eastern zone to embrace the entire State of Georgia. Subsequently the city of Knoxville, Tenn., and the towns of Greenville and Norris, Tenn., petitioned for similar extension of the eastern zone to include additional portions of eastern Kentucky and Tennessee.

This investigation was reopened, and after a preliminary study and report by our Bureau of Service as to the practicability from an operating standpoint of observing the State line as the time-changing point, further hearings were held at Atlanta and Knoxville.

In our twenty-fourth supplemental report, decided October 15, 1941, we modified our outstanding orders so as to include the entire State of Georgia in the eastern zone. The petitions respecting the further extension of that zone into eastern Tennessee and Kentucky were denied. The order modifying the zone boundary will become effective November 23, 1941, at 2 o'clock a. m.

STOCKYARD COMPANIES

On April 7, 1941, we made our report in Ex Parte No. 127, *Status of Public Stockyard Companies*, 245 I. C. C. 241. This was an investigation, instituted on our own motion, concerning the status of certain public stockyard and other companies as common carriers by railroad subject to the Interstate Commerce Act with respect to the transportation services performed at specified public stockyards in connection with the unloading and loading of carload shipments of livestock transported by railroad in interstate commerce to and from such public stockyards. One of the principal purposes of the investigation was to determine the nature and extent of our jurisdiction over public stockyard and other companies which perform the services of, and operate the facilities used in, loading and unloading livestock at public stockyards. Our findings established principles for the determination of the common-carrier status of public stockyard and other companies engaged in the performance of railroad loading and unloading services at public stockyards. As a result of the investigation, tariffs were filed containing the charges for the transportation services described.

INVESTMENT ACCOUNTS OF REORGANIZED RAILROADS

In our report of June 16, 1941, in Ex Parte No. 138, we had occasion to consider the proper statement of the accounts of companies created to take over the properties of carriers reorganized under section 77 of the Bankruptcy Act, as amended. *Chicago G. W. R. Co. Reorganization*, 247 I. C. C. 193.

The specific question presented was whether we should approve tentative opening journal entries to record the transfer of the properties of the Chicago Great Western Railroad Company, the company in reorganization, to the Chicago Great Western Railway Company, the company created to take over the properties. The proposed entries and a balance-sheet statement as of November 30, 1939, giving them effect, were submitted to our Bureau of Accounts for approval. These entries included, among other things, a charge of $87,080,612.97 to account 701, "Investment in road and equipment," an amount which represented the estimated original cost of the property then in service

as determined by our Bureau of Valuation; a credit of $5,739,926.35 to account 776, "Accrued depreciation—equipment," this being the amount of the balance in that account then on the books of the company in reorganization; and a credit of $24,015,577.11 to account 757½, "Reorganization adjustments of capital," this being the excess of the amount charged to "Investment in road and equipment" over the total par value of the securities authorized to be issued, plus the amount of other liabilities and less the amount of other assets.

In the accounting classifications which we have prescribed for carriers subject to our jurisdiction, investment in physical property is stated on the basis of cost to the accounting carrier. Where a carrier purchased the property of another as a going concern, account 41, "Cost of road purchased," was provided. This account was intended to reflect the cash cost of any road or portion thereof thus purchased, and we had stated in *Pittsburgh, C., C. & St. L. Ry. Co.*, 24 Val. Rep. 1, 7–9, that the provisions of account 41 applied to the acquisitions of properties as going concerns, whether by consolidation, purchase, or otherwise. As in *Chicago G. W. R. Co. Reorganization*, 228 I. C. C. 585 and 233 I. C. C 63, we had approved a capital-liability structure of approximately $62,000,000 for the reorganized company and had found that that amount fairly represented the worth of the assets that would be devoted by the reorganized company to the service of transportation, approval of the proposed accounting would have had the effect of showing assets greatly in excess of either the capital-liability structure which we had approved, or the cost of the property to the new company, if the transaction were considered as a purchase to be recorded as required by the text of account 41.

Had the transaction been recorded pursuant to the requirements of the text of account 41, the par value or assigned value of the securities issued in reorganization, viz. $62,000,000, would have been taken as the consideration given for the property acquired in reorganization. No credit would have been entered in either account 776 or account 757½, the charge to account 701 plus the amount recorded for other assets would not have exceeded the authorized capitalization plus the amount recorded for other liabilities, the investment in equipment would have been stated at its depreciated value instead of its original cost, and the investment in property other than equipment would have been distributed to primary investment accounts at amounts very materially below its original cost. Such accounting would have been in accord with that required by our order in *Accounting for Capital Items*, 201 I. C. C. 645, which was sustained by the Supreme Court in *Atlanta, B. & C. R. Co.* v. *United States*, 296 U. S. 33. It was contended that in the reorganization case there was not, as in the *Atlanta, B. & C. case*,

a purchase and sale to be recorded as required by the text of account 41. We did not consider it necessary to decide this question.

As both depreciation accounting and retirement accounting are generally based on cost, the use of account 41 for recording the acquisition of properties by the new company would have caused complications upon retirement of equipment units and their replacement by new units. In case of property other than equipment, it might also, upon retirement of a unit which was replaced, have resulted in unfairness to the reorganized company when compared with carriers in its territory which had escaped reorganization. There was also the possibility that it might cause the reorganized company certain hardships upon retirement of property not replaced, as when some portion of the railroad was abandoned.

Accounting classifications adopted by other Federal agencies in recent years have required that investment be stated on the basis of original cost, that is, the actual money cost of the property at the time it was first dedicated to public use, whether by the accounting company or a predecessor. These classifications also provide for appropriate adjustment accounts similar to our account 757½, except that they cover the acquisitions of property instead of relating only to reorganizations, and except, also, that they are carried on the assets instead of the liabilities side of the balance sheet. There is sound basis in the insistence in these accounting classifications upon accounting which will include and preserve a record of the original cost of property used in the public service. While it is probable that the need for the accounting prescribed in these classifications was discerned because of the fact that plants had been acquired as going concerns for prices materially in excess of their original costs, and while in reorganization cases we are dealing with a reverse situation, there is, nevertheless, equal need for the statement of the property in the accounts at original cost, or the best estimate thereof which is obtainable. The advantages of a uniform and continuing basis for the depreciation and retirement charges on account of railroad property, regardless of whether the accounting company has or has not undergone financial reorganization, or whether it has acquired units of property new or as parts of going concerns, are clear. The fact that, if such charges were based on original cost rather than on depreciated value, they would, in a case like the one under consideration, more nearly approximate the replacement cost, is an important element in these advantages.

Upon consideration of the question presented in the *Great Western case*, our conclusions were that we should modify our accounting classifications, form of balance sheet, and annual report form so as to provide that property acquired be stated in the accounts at original

cost as of the time the property unit was first devoted to railroad service, such cost, if not known, to be estimated by our Bureau of Valuation; that the difference between the original cost and the cost to the new company of acquiring the property, whether from another railroad or from a receiver or a trustee in bankruptcy, be shown in an adjustment account to be carried on the assets side of the balance sheet; and that the cost to the accounting company be measured, when securities are given in exchange, or liabilities assumed, by the face value of those securities, or, in the case of stock without par value, by the amount at which such stock is carried as a liability by the accounting company with our approval.

We have made the required modification of our accounting classifications by providing that acquired property includible in accounts 701 and 702 shall be recorded at original cost, as above defined, by canceling accounts 41 and 757½, by substituting for the latter a new account 702½, "Acquisition adjustment," and by requiring that on the balance sheet the balance in the new adjustment account be added to or subtracted from the sum of accounts 701 and 702 and the results shown as "Investment in transportation property." To the extent that a credit balance is available in this new account, retirement of property in existence at date of reorganization, which is not replaced, may be charged thereto with our approval, if the loss is not assignable to operations subsequent to reorganization, under the same rules that would apply if such retirements were otherwise chargeable to surplus. Other charges to the adjustment account may be made only with our approval. These changes in our accounting classifications required certain other modifications of a minor nature.

RAILROAD CREDIT CORPORATION

The liquidation of the Railroad Credit Corporation, referred to in our last report, has proceeded during the year. Of the original emergency revenue, $62,074,528.13, or 84.5 percent, has been returned to carriers participating in the plan. The balance remaining in the fund October 31, 1941, was $15,264,355.87.

ADMISSIONS TO PRACTICE

During the year ended October 15, 1941, 1,217 applicants were admitted to practice. This is at about the same annual rate as has prevailed for each of the preceding 5 years. However, if allowance be made for the taking over of 233 members of the bar of the United States Maritime Commission during the year, of whom 193 were members of the bar of a court and 40 were nonlawyers, the progressive decline in admissions beginning with 1939 will be found to continue.

Of the 1,217 admitted during the year, 1,115, or 91.6 percent, were members of the bar of the Supreme Court of the United States or of the highest court of some State. Of the remaining 102, 40 were nonlawyers taken over from the bar of the United States Maritime Commission, as stated above, and 82 were admitted after having successfully passed our examination. Since the establishment of the register of practitioners, September 1, 1929, the number admitted has aggregated 13,786, and of these successful applicants 9,591, or 69.6 percent, were members of the bar and 4,195, or 30.4 percent, were nonlawyers.

During the year two practitioners were suspended from practice, with leave to apply for reinstatement on and after 1 year from the date the respective suspensions became effective.

Written examinations of nonlawyer applicants are required by us, as outlined in our previous reports.

RAILWAY LABOR ACT, ETC.

In our annual reports for 1934, 1935, and 1936 we discussed briefly that part of the Railway Labor Act exempting, under certain conditions, electric railways. During the current year we determined the status of the Cincinnati & Lake Erie Railroad Company, and there is pending a proceeding as to the Municipal Belt Line Railway of Tacoma, Wash. The Railway Labor Act also authorizes us, after notice and hearing, to amend and interpret our orders defining work of employees or subordinate officials of common carriers by railroad. Accordingly we decided proceedings brought before us with respect to the work of elevator starters, operators, and information clerks of the Hudson & Manhattan Railroad Company, news agents of The Atchison, Topeka and Santa Fe Railway Company, certain employees and subordinate officials operating ore trains between Ruth and McGill, Nev., and certain ore-dock foremen and laborers at Superior, Wis.

Section 1 of the Railway Labor Act defines the term "carrier" as including among others any carrier by railroad subject to the Interstate Commerce Act. The definition is followed by a proviso which reads:

> *Provided, however,* That the term "carrier" shall not include any street interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

The proceeding before this Commission may arise from a request of the Mediation Board or upon complaint of any party interested.

Our determination of the question of status must be after hearing, which usually is followed by briefs and oral argument prior to our report in the matter.

The Railroad Retirement Act authorizes and directs this Commission upon request of the Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of a similar proviso. It is therein further provided:

> That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

The Carriers Taxing Act contains a similar proviso and authorizes and directs us upon request of the Commissioner of Internal Revenue or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of the proviso in that statute.

The Railroad Unemployment Insurance Act has substantially the same proviso and definition of employer, and it authorizes and directs us upon request of the board therein provided or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of the proviso in that statute.

It will be noted that the important question for determination by this Commission under these statutes is the status of the carrier. Generally, our record must develop the facts relating to the question whether the particular line, the status of which is to be determined, so operates as to be a part of a steam railroad or if its operation is such as to be a part of the general steam-railroad system of transportation. Often it becomes a question of importance to determine the status of a line having subsidiaries. These questions were at issue before us upon request of the Commissioner of Internal Revenue in *Denver & I. R. Co.*, 237 I. C. C. 641, and *Portland Traction Co.*, 237 I. C. C. 647.

INVESTIGATIONS

Reports have been made and published in the following investigations, instituted on our own motion:

Switching rates in the Chicago switching district, 243 I. C. C. 461.

Western-southern class rates, concerning the class rates applicable on interstate commerce, all rail, including the charges resulting there-

from, between points in western trunk-line and southern territories. Mimeographed, No. 26510.

Concerning the status of certain stockyard companies as common carriers by railroad subject to the Interstate Commerce Act, with respect to the transportation services performed at said stockyards in connection with the unloading and loading of carload shipments of livestock transported by railroad in interstate commerce to and from the public yards of said stockyard companies. Ex Parte No. 127. 245 I. C. C. 241.

Practices of carriers by railroad subject to the Interstate Commerce Act affecting operating revenues or expenses. Ex Parte No. 104. 245 I. C. C. 105, 112, 383, 437, 509, and 575.

Reduced pipe-line rates and gathering charges. 243 I. C. C. 115.

Concerning the lawfulness of the practices of common carriers by railroad and by motor vehicle of carrying forward charges of forwarders as advances on out-bound billing. Also concerning the lawfulness of the practices of common carriers by railroad of permitting carload shipments of forwarders and other shippers to be stopped to complete loading or to partly unload at points which are off the direct route from origin to destination. 243 I. C. C. 53.

Concerning the lawfulness of the rates, charges, rules, regulations, and practices of respondent rail carriers affecting the loading and unloading of carload freight of forwarders and other shippers at respondents' freight stations at Chicago, Ill., and St. Louis, Mo. 243 I. C. C. 411.

Concerning the lawfulness of the rates, charges, rules, regulations, and practices of common carriers by railroad, by motor vehicle, and by water for the transportation in interstate or foreign commerce (insofar as such transportation is subject to the provisions of parts I and II of the Interstate Commerce Act) of stone or granite from points in Vermont to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia. 243 I. C. C. 555.

Concerning (1) the lawfulness of the rates and charges of common carriers by railroad for the transportation in interstate commerce of petroleum products, in tank-car loads, from and to points in Kansas, Oklahoma, Colorado, northwestern Arkansas, and southwestern Missouri, including the lawfulness of the rules, regulations, and practices affecting such rates and charges, and (2) the lawfulness of the corresponding rates and charges of common and contract carriers by motor vehicle for the transportation in interstate commerce of like petroleum products in tank trucks, in truckloads, from and to the same points, including the lawfulness of the rules, regu-

lations, and practices affecting such rates and charges. 245 I. C. C. 617.

To determine whether The New York Central Railroad Company owns, leases, operates, controls, or has any interest whatsoever in Nicholson Universal Steamship Company; whether said railroad company does or may compete for traffic with said steamship company between points upon the route of the steamship company; and to determine what orders shall be entered to remove any unlawfulness found to exist. No. 28162, decided October 6, 1941.

Intercoastal rate structure. No. 28622, decided August 26, 1941.

Proportional rates on citrus fruit from Jacksonville, Fla. No. 28625, decided September 12, 1941.

The following investigations were discontinued:

Concerning the lawfulness of the rates, charges, rules, regulations, and practices set forth in certain schedules of various rail carriers providing class and commodity rates on less-than-carload or any-quantity shipments from and to New York, N. Y., Baltimore, Md., Buffalo, N. Y., Pittsburgh and Philadelphia, Pa., Cleveland, Columbus, and Cincinnati, Ohio, Detroit, Mich., Chicago, Ill., and St. Louis, Mo., and from and to various other points in official territory. Discontinued by order August 1, 1941.

Concerning the status of the Western Transit Company, for the purpose of determining (1) whether said company is entitled to file or to keep on file with the Commission tariffs published and filed by it or in which it may be shown as a participating carrier, and (2) if not so entitled, whether such tariffs should be rejected and stricken from the files of the Commission. Discontinued by order May 5, 1941.

Other investigations are pending, some of the more important of which are:

Concerning cost finding in transportation service with a view to determining whether the Commission shall require all or any common and contract carriers subject to part I or part II of the Interstate Commerce Act to file special or annual reports for cost-finding purposes in accordance with the plan recommended by the Federal Coordinator of Transportation, or some other plan, and to prescribe such forms of accounts, records, or memoranda, to be kept by all or any said carriers, as may be necessary or desirable in connection therewith. Ex Parte No. 122.

Status of South Buffalo Railway Company. Ex Parte No. 128.

Determination of the limits of New York Harbor and harbors contiguous thereto. Ex Parte No. 140.

In the matter of rules and regulations governing the settlement of rates and charges of common carriers of property by water. Ex Parte No. 143.

To determine the extent of the Commission's jurisdiction over persons engaged in the operation of wharves and other terminal facilities used in connection with the transportation by water of passengers and property in interstate and foreign commerce. Ex Parte No. 144.

Determination of the limits of Philadelphia Harbor and harbors contiguous thereto. Ex Parte No. 145.

Refrigeration charges on fruits, vegetables, berries, and melons from the West. No. 20769.

Concerning the lawfulness of existing through routes and joint rates, rules, regulations, and practices for application by common carriers by railroad and by common carriers by water operating upon the Mississippi and Warrior Rivers and their tributaries; the reasonableness of existing minimum differentials between all-rail rates and corresponding rail-barge, barge-rail, and rail-barge-rail rates; the necessity, if any, for the establishment by the aforesaid common carriers by railroad and by water of additional through routes and joint rates, rules, regulations, and practices; and for the fixing of reasonable minimum differentials, if any, between the corresponding all-rail rates and any such additional through routes and joint rates. No. 26712.

Concerning the lawfulness of the rates, charges, rules, regulations, and practices of common carriers by railroad; of common carriers by motor vehicle, including the so-called haul-away, drive-away, and tow-bar methods; of contract carriers by motor vehicle, including the so-called haul-away, drive-away, and tow-bar methods; and of common carriers by water, for the transportation in interstate or foreign commerce (insofar as such transportation is subject to the provisions of parts I and II of the Interstate Commerce Act) of new automobiles, set-up (not including shipments by rail or water moving on less-than-carload rates), from and to all points in the continental United States other than the territory of Alaska, No. 28190.

Concerning the lawfulness of the rates, charges, allowances, rules, regulations, and practices of respondent rail carriers with respect to pick-up of livestock by truck at places within 10 miles of certain stations in Illinois, Iowa, and Wisconsin. No. 28216.

Concerning the lawfulness of the rates, charges, rules, regulations, and practices published in Chicago Great Western Railroad Company tariff No. I. C. C. 5492, for the transportation of trucks on flatcars between Chicago, Ill., and Council Bluffs, Iowa. No. 28288.

Concerning the lawfulness of all rates determined by ratings in the Consolidated Freight Classification, including the Illinois Classification, irrespective of whether ratings are stated as the regular numbered or lettered classes or as percentages of first class, but none other, applicable to the transportation in interstate or foreign commerce of property by common carriers by railroad, or by water, or partly by

railroad and partly by water, subject to the Interstate Commerce Act, and the charges resulting therefrom between all points in the United States lying on and generally eastward of the western boundaries of western trunk-line and southwestern territories. No. 28300.

Concerning the lawfulness of the descriptions, minima, and ratings provided in the Consolidated Freight Classification, including the Illinois Classification. No. 28310.

Concerning the lawfulness of the descriptions, minima, and ratings provided in freight classifications proper of common carriers by motor vehicle applicable to transportation of property by such carriers in interstate or foreign commerce. No. MC–C–150.

Concerning the lawfulness of the class rates determined by the ratings stated in any manner in the motor-freight classifications proper, but none other, applicable to the transportation in interstate or foreign commerce of property by common carriers by motor vehicle, or by such carriers under joint class rates in connection with common carriers by water, subject to the Interstate Commerce Act, and the charges resulting therefrom, between all points in the United States lying on and generally eastward of the western boundaries of western trunk-line and southwestern territories. No. MC–C–200.

Concerning the lawfulness of reduced classification-exception ratings on articles published in specified tariff schedules of common carriers by motor vehicle, or their agents, applicable to the transportation in interstate or foreign commerce of property within southern territory, between southern and official territories, and from western trunk-line territory and southern Missouri to southern territory over highway routes. No. MC–C–210.

Concerning the lawfulness of the all-freight commodity railroad rates applying from Chicago, Ill., and from Mississippi River and Ohio River crossings to points in southern territory, including the rates involved in Investigation and Suspension Dockets Nos. 4315 and 4644, particularly to ascertain the effect of the said rates upon carrier revenues; upon, and their relation to, other railroad rates applying to the transportation of similar or competing articles of freight; upon transportation costs borne by individual shippers and receivers of freight, upon expeditious railroad service; and upon rates maintained by competing forms of transportation. No. 28323.

Concerning (1) the services required to be performed by the New York Central Railroad Company on its own behalf and as lessee of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company; the New York, Chicago & St. Louis Railroad Company; Robert E. Woodruff and John A. Hadden, trustees of the property of the Erie Railroad Company; the Pennsylvania Railroad Company; the Baltimore & Ohio Railroad Company; and the Wheeling & Lake Erie

Railway Company under their line-haul rates in connection with the delivery of direct shipments of livestock consigned to receivers at the Union Stockyards, Cleveland, Ohio, and (2) the character and extent of the facilities which the petitioners are required to provide in connection with said delivery. No. 28400.

Concerning the lawfulness of all warehousing and storage rates, charges, rules, regulations, and practices of common carriers by railroad at the ports of Portland, Maine, Boston, Mass., New London, Conn., Providence, R. I., Albany, N. Y., Philadelphia, Pa., Baltimore, Md., Wilmington, Del., Camden and Trenton, N. J., and Norfolk, Portsmouth, and Newport News, Va. No. 28420.

Concerning the lawfulness of so-called proportional rates of such common carriers and the minimum charges of such contract carriers applicable on interstate or foreign traffic transported from named points which has arrived at such points as a part of shipments by rail, water, or motor vehicle for movement beyond over the lines of respondents in less-than-carload, less-than-truckload, or truckload quantities; or on less-than-carload, less-than-truckload, or truckload shipments of freight which move to named points over respondents' lines for movement beyond as parts of shipments by rail, water, or motor vehicle. No. 28496.

Concerning the lawfulness of the practices of common carriers by railroad with respect to the payment of mileage allowances to the General American Tank Car Corporation for the use of tank cars owned by such corporation, leased to petitioners under a lease contract dated September 28, 1933, furnished by petitioners to the carriers by railroad for the transportation in interstate or foreign commerce of coconut oil from Berkeley and Oakland, Calif. No. 28515.

Concerning the lawfulness of the rules, regulations, and practices of common carriers by railroad and common carriers by motor vehicle relating to the storage of wool and mohair at points of origin in Oregon, Washington, California, Idaho, Montana, Wyoming, Utah, Arizona, and Nevada. No. 28530.

Concerning the lawfulness of reduced classification-exception ratings on articles published in specified tariff schedules as exceptions to the southern classification, applicable to the transportation of property subject to the Interstate Commerce Act within southern territory, between southern and official territories, and from western trunk-line territory and southern Missouri to southern territory, over rail, water, and rail-and-water routes. No. 28550.

Concerning the lawfulness of switching and weighing allowances of Fort Smith & Van Buren Railway. No. 28571.

Concerning the lawfulness of the rates, charges, rules, regulations and practices, as published in Columbus & Greenville Railway Company's freight tariff No. 9–B, I. C. C. No. 81, providing allowances

to shippers of out-bound cottonseed products from manufacturing or mill points on the line of that carrier in instances where the in-bound shipments of cottonseed have moved over the lines of other carriers. No. 28590.

Concerning the lawfulness of the rates and charges, and the regulations and practices affecting such rates and charges, applicable to the transportation, in interstate or foreign commerce, of oleomargarine, in carloads, from Indianapolis, Ind., Chicago, Ill., and points grouped therewith to Independence and Kansas City, Mo., and points grouped therewith, over all-rail routes. No. 28600.

Concerning the lawfulness of the rates and charges, including minimum rates and charges, and the rules, regulations, and practices affecting such rates and charges, applicable to the transportation of sugar from the New Orleans district to river ports in the States of Illinois, Indiana, Iowa, Kentucky, Tennessee, Missouri, Minnesota, Wisconsin, and Ohio; also from Philadelphia, Pa., Baltimore, Md., and New York Harbor points to Buffalo, N. Y., for beyond, and to all ports west thereof on Lake Erie, Lake Huron, and Lake Michigan, including Detroit, Mich., over all-water routes. No. 28641.

Concerning the lawfulness of the rates and charges, including minimum rates and charges, and the rules, regulations, and practices affecting such rates and charges, applicable to the transportation by carriers by water of lumber and other forest products between ports and terminals in Oregon and Washington and the California ports of Alameda, Oakland, San Francisco, and Los Angeles Harbor and adjacent ports. No. 28686.

Concerning the lawfulness of the rates and charges, including minimum rates and charges, and the regulations and practices affecting such rates and charges, applicable to the transportation in interstate or foreign commerce of soap and related articles in carloads from Jersey City, N. J., to Norfolk, Va. No. 28692.

Concerning the reasonableness, and the lawfulness otherwise, of the rates and charges, including minimum rates and charges, and the regulations and practices affecting such rates and charges, applicable to the transportation, in interstate or foreign commerce, of cotton clothing, any quantity, from Booneville, Corinth, New Albany, and Tupelo, Miss., and Martin, Paris, Union City, and Clarksville, Tenn., to St. Louis, Mo., and East St. Louis and Belleville, Ill.

Concerning the reasonableness, and the lawfulness otherwise, of the ratings, classifications, rates, and charges, and the rules, regulations, and practices affecting such ratings, classifications, rates, and charges, applicable to the water-rail transportation, in interstate or foreign commerce, of alcoholic liquors, including wine, in lots of 20,000 pounds or more, between eastern points and southern points, and proportional

rates and charges, and the rules, regulations, and practices affecting such rates and charges, from Charleston, S. C., to Atlanta, Ga.

INTRASTATE RATE CASES

Reports have been made and published in the following proceedings instituted by us under section 13 of the act:

To determine whether the rates on whiting required by the Board of Public Utility Commissioners of the State of New Jersey to be maintained by petitioners, other than The Baltimore & Ohio Railroad Company, the Reading Company, and The Staten Island Rapid Transit Railway Company, from Camden, N. J., to all destinations on their lines within New Jersey, cause, or will cause, any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. *Southwark Mfg. Co.* v. *Pennsylvania-R. Seashore Lines*, 241 I. C. C. 233.

To determine whether the rates and charges of common carriers by railroad, or any of them, operating in Pennsylvania for the intrastate transportation of industrial sand in open-top cars from Polk and Utica, Pa., made or imposed by authority of the State of Pennsylvania, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. 243 I. C. C. 393.

To determine whether the rates and charges of common carriers by railroad, or any of them, operating in Ohio for the intrastate transportation of fluxing stone from Marblehead to destinations in the Mahoning Valley, viz, Alliance, Bentley, Girard, Hubbard, Leetonia, Lowellville, Newton Falls, Niles, Struthers, Warren, and Youngstown, also to Canton and Massillon, made or imposed by authority of the State of Ohio, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. 241 I. C. C. 701.

To determine whether the rates on cement required to be maintained within Florida cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust

discrimination against interstate or foreign commerce. 243 I. C. C. 365.

The following investigation under section 13 of the act is pending:

Intrastate class rates in North Carolina. No. 27900.

BUREAU OF ACCOUNTS

The major activities of the Bureau of Accounts during the year have been in connection with general investigations of the accounts and records of common carriers under section 20 of the Interstate Commerce Act, 236 of which were completed and 45 were in progress at the close of the year. Completed investigations covered 202 steam railroads, 15 electric lines, 11 pipe lines, and 8 water carriers. The Bureau also completed 60 special investigations for other bureaus of the Commission, 35 of which were for the Bureau of Finance in relation to reopened deficit income claims of railroads incident to Federal control, as provided by the amendment of section 204 of the Transportation Act, 1920, which was approved at the last session of Congress (see discussion herein under the heading "Bureau of Finance"). Ten special investigations were concluded for the Commission, 7 of which were in connection with railroad reorganization proceedings under section 77 of the Bankruptcy Act, as amended. Thus a total of 296 regular and special investigations were completed during the year.

By order entered in *Telephone and Railroad Depreciation Charges*, 177 I. C. C. 351, decided July 28, 1931, we prescribed depreciation accounting for steam railroads, the order covering all depreciable property, including fixed property as well as equipment. The order became effective with respect to the latter. The railroads had never theretofore, except in sporadic instances, included in operating expenses annual charges for accruing depreciation of their fixed property. It was evident that a radical change from the replacement or retirement accounting for such property which had been followed for many years to a system of depreciation accounting would cause much initial expense of installation. Because of this fact and the extraordinary depression of railroad earnings which then existed, we postponed the effective date of the order indefinitely so far as it related to fixed property. The present earnings of the railroads, under the stimulus of the national-defense program, make this an opportune time to inaugurate the new accounting. Furthermore, the rapid intensification of competitive conditions in transportation which has occurred since our depreciation order was originally entered has made depreciation a factor of continually increasing importance, especially the depreciation which results from obsolescence. Accordingly, the matter of requiring depreciation accounting for fixed railroad prop-

erty has been given renewed consideration by the Bureau, and has been taken up with the carriers with a view to making such accounting effective on January 1, 1942, if possible.

In our last report, mention was made of the difficulties experienced in carrying out the requirements of the act with respect to depreciation accounting for carriers by water, final action in that respect having been unavoidably delayed by reason of our inability to secure the adoption of a uniform system of accounts that might serve the purposes of the United States Maritime Commission as well as those of this Commission. As there indicated, this phase of the matter has been simplified by the enactment of the Transportation Act of 1940. Accordingly, a tentative draft of a revised Uniform System of Accounts for Carriers by Water, in which is included appropriate provisions for depreciation accounting, has been prepared and distributed to water carriers subject to the jurisdiction of this Commission, and a number of conferences on this subject have been had with the representatives of various groups of these carriers, including both those on the coasts and those on the inland waters. A somewhat similar situation exists with respect to the accounting of the car-owning companies which furnish protective service to perishable railroad shipments and which were brought within our jurisdiction by the Transportation Act of 1940. The Bureau has in course of preparation a uniform system of accounts for such companies, which will include appropriate provisions for depreciation accounting.

Prior to the Transportation Act of 1940, the carriers (exclusive of motor carriers) that were subject to our jurisdiction over accounting consisted of 757 steam railroads, 86 electric railroads, 90 water lines, 71 pipe lines, 1 sleeping-car company, and 1 express company. That act had the effect of adding to this list approximately 350 water carriers and 565 car-owning companies. For the present, however, it is not contemplated that accounting regulations will be prescribed for the latter, except so far as they are engaged in the furnishing of protective service.

During the year we issued 91 orders having their inception in the work of the Bureau. Of these, 10 prescribed initial depreciation rates for certain steam railroads and pipe lines, and 65 modified previous depreciation orders in such respects as were found necessary as a result of continuing supervision of the depreciation rates of those classes of carriers. The other 16 orders pertained to our accounting regulations for steam railroads, electric railways, and pipe lines, and in the main were designed to modernize the regulations the better to meet present-day needs. Among the more important of the latter orders is one strengthening the rule requiring steam railroads to adjust their accounts when the value of their investments in securities

has been permanently impaired. Another, effecting a material change in the rules for accounting for steam-railroad property acquired, is more fully discussed herein under the heading "Bureau of Finance."

BUREAU OF FINANCE

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

The following is a summary of applications filed during the year for certificates of public convenience and necessity under section 1 (18) to (22) of the act, and of the disposition made of applications. In a few cases single applications filed and certificates issued were for more than one purpose. That is, they related to abandonment as well as to construction or acquisition or operation. To that extent there are duplications in the totals shown, as indicated in footnotes 1 and 2.

Item	Number	Mileage
Applications filed:		
For authority to construct new lines or extend existing lines	14	50.337
For permission to abandon	139	2,317.575
For authority to acquire or to acquire and operate	14	151.568
Total	[1] 167	2,519.480
Certificates issued:		
Authorizing new construction	17	44.838
Permitting abandonment	111	1,938.236
Authorizing operation or acquisition	12	85.533
Total	[2] 140	2,068.607
Applications denied:		
For authority for new construction	1	9.510
For permission to abandon	2	109.350
For authority to acquire	0	0
Total	3	118.860
Applications dismissed:		
For authority for new construction	4	29.628
For permission to abandon	13	235.889
For authority to acquire or to acquire and operate	1	31.750
Total	[3] 18	297.267

[1] Includes 5 duplications.
[2] Includes 4 duplications.
[3] Includes 2 applications dismissed in part.

Among the applications disposed of during the year were several pending October 31, 1940. A list of certificates issued appears in appendix F.

Since the effective date of the Transportation Act, 1920, we have authorized the construction of approximately 10,133 miles of new railroad and have issued certificates permitting the abandonment or discontinuance of operation of 25,840 miles of railroad. Based on reports by carriers and on other available information, it appears that of the construction authorized, approximately 7,219 miles of railroad have been completed, and that projects covering about 2,582

miles have been abandoned or deferred. The remainder, about 332 miles, represents cases in which the specified completion periods have not expired.

ABANDONED MILEAGE

During the year ended October 31, 1941, 139 applications were filed for permission to abandon 2,317.575 miles of railroad lines or the operation thereof. We granted 111 applications, of which 32 were contested and 79 were uncontested cases, involving 1,083.618 miles of branch line of class I carriers, together with 854.618 miles of so-called short lines, of which 426.695 miles constituted the entire lines of the applicants and 427.923 miles were portions of such lines. Information is not available as to the total number of miles which were actually abandoned under the permissions granted. In proceedings in which certificates were issued, covering 1,318.788 miles of road, the estimate of average annual losses from continued operation or of future annual savings resulting from abandonment amounted to $638,577. In proceedings covering the remaining 522.248 miles, estimates of losses or savings are not given. The figures for annual losses are based largely on the results of operation in recent years. Mileage and possible losses or savings in trackage-rights abandonments are not included.

It has been shown in certain cases that the necessary cost of rehabilitation or of bringing up deferred maintenance of tracks which were permitted to be abandoned, aggregating about 684.686 miles, would require an expenditure estimated at $2,356,782. Since this amount would necessarily be expended in order to continue operation, abandonment would result in a saving which to that extent can, with considerable accuracy, be estimated in advance.

Corresponding data are given in our reports beginning with the report for 1934.

Probably the least important item in saving resulting from abandonment is the salvage realized. This is seldom emphasized, because the value cannot be ascertained until dismantlement has taken place and the disposition of the salvaged material has been made. However, owing to the present national demand for metals and rails which can be salvaged from abandoned railroads, this feature of abandonments has become of greater importance than heretofore.

The reasons generally advanced to warrant abandonment were insufficient traffic, resulting from various causes, including failure of expected traffic to develop, exhaustion of sources of traffic from forests and mines, and losses of traffic to other forms of transportation. In a few cases operation of lines had been discontinued before applications for permission to abandon were presented.

The actual monetary savings resulting from abandonment of mileage is generally an indeterminate amount, and, while we are satisfied that the abandonments permitted were in the interest of economy, the saving cannot be stated in exact figures. In nearly all cases abandonment results in the loss of traffic, but in many cases some portion of the traffic formerly handled on the lines proposed to be abandoned will continue to reach the applicants' railroads by highway.

ACQUISITION OF CONTROL OF ONE CARRIER BY ANOTHER

Under the provisions of section 5 (2) (a) of the act, as amended September 18, 1940, it is lawful, with our approval and authorization, for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its capital stock or otherwise; or for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

Railroads.—Under this paragraph, railroad companies filed 47 applications during the year. A list of authorizations issued appears in appendix F. One application was denied and 2 were dismissed in part. Six were filed jointly with convenience and necessity applications under section 1 (18) of the act, and one jointly with an application under the Panama Canal Act.

In *Wabash R. Co. Control*, 247 I. C. C. 365, decided July 29, 1941, we found, subject to certain conditions, that the acquisition by the Pennsylvania Railroad Company and the Pennsylvania Company, a holding company, of control of the Wabash Railroad Company, through ownership of its capital stock, and the indirect control thereby of certain subsidiary railroad companies, was consistent with the public interest. The issue of an order was deferred pending submission by the applicants, for our approval, of appropriate agreements to make effective the requirements of our conditions that the applicants transfer all shares of stock of the Lehigh Valley Railroad Company and the New York, New Haven & Hartford Railroad Company held by them, or either of them, to a trustee to be approved by us, and cause the Wabash Railroad Company, if legally within its power, to transfer

all shares of stock in the Lehigh Valley Railroad Company which it will purchase as part of the assets of the Wabash Railway Company, or which may come into its possession otherwise, to a trustee to be approved by us. The trustee or trustees, when appointed, are to vote the stock for all purposes.

Water carriers.—Seven applications involving water carriers have been filed under section 5 (2). Four have been granted, and one has been dismissed. A list of the authorizations appears in appendix F. In connection with *Baltimore Steam Packet Co. Acquisition and Control*, 244 I. C. C. 583, the first case listed, we approved and authorized, under the Panama Canal Act, continuance by the receivers of the Seaboard Air Line Railway Company, and acquisition by the Chesapeake Steamship Company of Baltimore City, the Atlantic Coast Line Railroad Company, and the Southern Railway Company, of interests in the Baltimore Steam Packet Company.

The application which was dismissed was filed by the Minnesota-Atlantic Transit Company, seeking authority to lease certain steamships from the Great Lakes Transit Corporation for the season of navigation on the Great Lakes during 1941. We concluded that the Congress intended the strictures of section 5 to apply, not to transactions involving temporary or short-term use by one water carrier of equipment or other facilities of another—that is, transactions in the nature of exchanges of equipment between railroads—but to transactions whereby the lessor or vendor of such property would be divested of ability to continue its operation and service.

Three applications for approval under section 311 (b) of the act of temporary operations were filed and were granted. Two were by the Minnesota-Atlantic Transit Company and the third was by the Norfolk, Baltimore & Carolina Line, Inc.

On the only application filed under section 5 (1) of the act, we approved and authorized pooling of service and division of gross earnings by the Minnesota-Atlantic Transit Company and the Nicholson-Universal Steamship Company in the transportation of new automobiles, trailers, et cetera, by water from Detroit, Mich., to Duluth, Minn., and from Detroit to Buffalo, N. Y., 247 I. C. C. 319.

Motor Carriers.—Applications filed by motor carriers under section 5 of the act are discussed herein under the heading "Bureau of Motor Carriers."

HOLDING COMPANIES

In *Warrior & Gulf Nav. Co. Control*, 250 I. C. C. 26, decided September 11, 1941, among other things we authorized the United States Steel Corporation, a holding company, to acquire control of the water carrier through ownership of stock. Section 5 (3) of the act provides that whenever a person which is not a carrier is authorized under

section 5 (2) to acquire control of any carrier or carriers, that person thereafter shall, to the extent provided by us in our order, be considered as a carrier subject to the provisions of section 20 (1) to (10) inclusive of the act relating to reports, accounting, et cetera, and section 20a (2) to (11) inclusive relating to issues of securities, et cetera. Inasmuch as many of the Steel corporation's investments and interests are wholly unrelated to transportation, and, so far as we are advised, its interests in carriers are incidental and subordinate to its primary interest in the production of steel, we concluded there was no reason or legal requirement for including in our authorization any provision subjecting the Steel corporation to our regulation under the paragraphs of sections 20 and 20a above mentioned.

In *Wabash R. Co. Control*, *supra*, it appeared that the Pennsylvania Company, a subsidiary of the Pennsylvania Railroad Company, is an investment or holding company dealing principally in railroad securities. In that case we stated that our order, when entered, would contain appropriate provisions subjecting the Pennsylvania Company to the requirements of the stated paragraphs of sections 20 and 20a of the act.

RAILWAY EMPLOYEES

Section 5 (2) (f) provides that as a condition of our approval under paragraph 2 of any transaction involving a carrier or carriers by railroad, we shall require a fair and equitable arrangement to protect the interests of the railroad employees affected by the transaction, and specifically directs that we shall include terms and conditions providing that during the period of 4 years from the effective date of our order, but not for a longer period than the period during which the employee was in the employ of the carrier or carriers prior to the effective date of the order, the transaction will not result in employees affected being in a worse position with respect to their employment.

In all proceedings initiated by railroads under section 5 (2), it has been necessary for us to ascertain whether any employees would be affected, and, if so, to what extent. In approving transactions which involved no change in the status or interests of employees, we have imposed no conditions as to employment. Generally speaking, such transactions related to properties already operated as integral parts of systems. In some cases we have specifically reserved jurisdiction to make additional findings and impose such terms and conditions as to employment as may be required by law, if upon petition by the employees or their representatives it is made to appear that their employment or interests will be adversely affected by anything subsequently done pursuant to, or as a result of, the authorizations granted.

So far only two cases have arisen in which we have found it necessary to provide plans for the protection of employees. In *Cleveland*

& P. R. Co. Purchase, 244 I. C. C. 793, we authorized the Cleveland & Pittsburgh Railroad Company, the Pennsylvania Railroad Company, lessee, and the Pittsburgh & Lake Erie Railroad Company to purchase jointly the properties of the Beaver Valley Railroad Company, an independent short line, operating 3.1 miles of line, with four full-time employees and two part-time employees. We required the Pennsylvania Railroad Company and the Pittsburgh & Lake Erie jointly to guarantee each Beaver Valley Railroad employee, by contract with each employee, monthly compensation equal to one-twelfth of the total compensation received by him in the 12 months preceding the date the application was filed. In *Texas & P. Ry. Co. Operation*, 247 I. C. C. 285, an application was filed for authority under section 1 (18) of the act to construct certain connecting tracks, permission to abandon car-ferry operations at New Orleans, and authority under section 5 (2) to operate jointly over the New Orleans Bridge, owned by the city of New Orleans, and certain other tracks and yards. On the basis of 1938 business, it was estimated by the applicants that a maximum of 89 employees would be dismissed, 40 of whom were employed in connection with the car-ferry operations. Because of increased business since 1938, it appeared probable that a large number of the rail employees (as distinguished from car-ferry employees) could be placed elsewhere. We held that the construction, abandonment, and joint operations proposed constituted an inseparable plan which could be made effective only upon our authorization, in part, under section 5, and that therefore we were required to comply with the provisions of paragraph 2 (f). We granted the authorizations requested upon conditions which provide protection for employees who might be adversely affected by the plan of operation proposed.

Briefly, the conditions require that during the protective period provided in paragraph 2 (f) of the act, a displaced employee—that is, one who is retained in service by the applicants but placed in a worse position with respect to his compensation and the rules governing his working conditions—should be paid a displacement allowance; that any employee deprived of employment should be paid a dismissal allowance; and that no employee should be deprived of benefits other than wages attached to his previous employment, such as free transportation, hospitalization, et cetera. The allowance of each employee affected is to be computed on the basis of his total compensation in the 12-month period immediately preceding the date his status is affected as a result of the transaction. Compensation earned by dismissed employees in other employment is to be taken into consideration in computing their allowances. Provision is made for the creation, by the carriers and the employees, of an arbitration committee

for consideration and determination of questions which cannot be settled by such carriers and the employees, or their representatives.

We have uniformly held that we have no authority to impose conditions for the protection of employees adversely affected by abandonments of lines of railroad. In *Pacific Electric Ry. Co. Abandonment*, 242 I. C. C. 9, we restated that conclusion. The case involved the abandonment of various disconnected segments of the Pacific Electric lines, and the substitution, in most instances, of motor bus or truck service. *Railway Labor Executives' Ass'n.* v. *United States*, 38 Fed. Supp. 818, is a proceeding by the plaintiffs to set aside our certificate in this abandonment case. The District Court for the District of Columbia, in discussing our jurisdiction under the abandonment provisions of the act and under the consolidation provisions of the act as they existed prior to September 18, 1940, said, at page 824:

> But in the case of an abandonment proceeding the second objective—protection of displaced personnel—might be either unfair or impractical and should not, therefore, be mandatory. If the object of the abandonment is to cut off the dead limb of a railway or if it is the total abandonment of a small system, as was true in the case of the Arlington & Fairfax Railway, as to which we had a part, [*Arlington & Fairfax Auto R. Co.* v. *Capital Transit Co.*, 71 App. D. C. 53, 109 Fed. (2d) 345] it conceivably might be wholly unreasonable to add to the burden the further loss of requiring financial support of employees no longer needed. But, if, on the other hand, the abandonment like consolidation tends to increase the earnings of the corporate applicant by avoiding unnecessary duplication of service or, as in this case, where the abandonment means not a withdrawal of transportation service from a particular area, but the substitution of bus for rail service and the general rearrangement of the properties and operations of the company, as the result of which both stockholders and the public will benefit, it is difficult to recognize any distinction between such a case and one of consolidation, except that the proceedings in the one case are required to be under Section 1 (18–20) and the other under Section 5 (4) (b).

The court set aside that part of our report in which we denied consideration of the employees' petition and directed us to consider the petition and take such action thereon as in our discretion is proper.

The case is now pending before the Supreme Court of the United States on appeal by this Commission and the Pacific Electric Railway Company.

ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATION

We have received 132 applications and supplements thereto under section 20a. We have entered 135 orders authorizing the issue or modification of securities and the assumption of obligations and liabilities in respect of the securities of others in the total amounts and for the purposes shown in appendix F, and 2 applications were dismissed.

Under section 20a (9), certificates of notification of the issue of notes maturing within 2 years in the total sum of $3,997,536.78 were filed.

The tabulation in appendix F includes all securities authorized, whether for nominal, conditional, or actual issue.[1] It does not include notes and other obligations given the Reconstruction Finance Corporation by carriers to evidence or secure loans by that Corporation to them, as neither our authorization of such issues nor the reporting thereof under the provisions of section 20a is required.

The following tabulation shows by classes the respective amounts of securities authorized:

Class of security	Nominal issue	Conditional issue	Actual issue
Common stock			[1] $23, 394, 950. 00
Preferred stock			18, 305, 200. 00
Mortgage bonds	$200, 000	$85, 399, 000	162, 876, 600. 00
Debentures			6, 860, 000. 00
Income bonds			11, 184. 500. 00
Collateral trust bonds			6, 000, 000. 00
Secured notes			31, 636, 915. 00
Unsecured notes			5, 250, 000. 00
Equipment-trust obligations			275, 359, 000. 00
Trustees' certificates			15, 250, 000. 00
Trustees' notes			3, 400. 00
Receivers' notes			12, 733. 56
Total	200, 000	85, 399, 000	556, 133, 298. 56

[1] Also 179,000 shares without par value.

The amounts shown as authorized for actual issue do not include securities delivered by a subsidiary to a controlling company subject to our jurisdiction unless the controlling company has been authorized to dispose of the securities. Such securities are included under either "nominal issue" or "conditional issue," as may be appropriate.

Of the securities for conditional issue, $1,023,000 of mortgage bonds were authorized to be issued in exchange for, or in lieu of, or to pay, extend, or refund other securities nominally, conditionally, or actually outstanding, and $76,813,000 of mortgage bonds had been previously authorized for nominal or conditional issue.

Of the securities for actual issue, $4,300,000 and 19,000 shares without par value of common stock, $18,305,200 of preferred stock, $149,226,600 of mortgage bonds, $6,860,000 of debentures, $464,000 of income bonds, $6,000,000 of collateral-trust bonds, $30,536,915 of secured notes, $4,900,000 of unsecured notes, $15,250,000 of trustees' certificates, and $12,733.56 of receivers' notes were authorized to be issued in exchange for, in lieu of, or to pay, extend, or refund other securities. From the foregoing it appears that additional capitalization to result from the various authorizations is as follows: Nominal

[1] These terms are defined at page 7 in the annual report for 1931.

issue, $200,000; conditional issue, $7,563,000; actual issue, $320,277,850; and 160,000 shares of common stock without par value.

During the period covered by this report, the amount of temporary financing was about 80 percent less than that of the previous period, and, as indicated below, about 57 percent thereof was for the purpose of renewing or refunding existing obligations. The amount of short-term notes issued without our authorization is shown above. Of this amount, $2,281,985.05 was for renewal of notes previously issued, and the remainder was to obtain additional funds for current corporate requirements. In addition, there are included in the foregoing tabulation secured and unsecured notes of a maturity of not more than 3 years and aggregating $11,050,000 authorized by us for actual issue. Of these short-term notes, $10,900,000 was to pay, renew, extend, or refund outstanding securities, and $150,000 was for other corporate purposes.

As indicated above, the additional capitalization resulting from the various authorizations amounts to $328,040,850 and 160,000 shares of common stock without par value, of which $275,359,000 represents equipment-trust obligations issued to obtain new money for the purchase of equipment.

The new financing represented by the issue of equipment-trust obligations is $104,115,000 more than in the preceding period, but the interest rates and average cost are slightly lower. The nominal rates borne by these obligations have ranged from 1 to 3 percent, the average being 1.83 percent, and the prices at which they have been sold resulted in an average annual cost to the carriers of 1.82 percent.

During the period covered by this report and in connection with the Wabash Railway Company receivership, conditional findings were made, but no order was entered, in respect of the issue of securities and the assumption of obligation and liability by the Wabash Railroad Company, which has been organized to acquire the properties now in receivership. The securities involved in these findings consist of the issue of 598,186 shares of common stock without par value, $31,106,677 of preferred stock, $39,220,071 of income bonds, $9,066,411 of secured notes, and $47,354,241 of mortgage bonds, and the assumption of obligation and liability in respect of $8,540,000 of equipment obligations and $2,075,000 of mortgage bonds. The foregoing figures are not included in any tabulation herein.

INTERLOCKING DIRECTORATES

Under the provisions of section 20a (12), it is unlawful for any person to hold the position of officer or director of more than one carrier by railroad or corporation organized for the purpose of engaging in transportation by railroad, unless such holding shall have

been authorized by our order. During the period covered by this report, we received 187 applications from individuals and 2 from carriers. Disposition was made of 182 applications, of which 178 were granted, 3 were withdrawn, and 1 was denied.

LOANS TO CARRIERS AFTER FEDERAL CONTROL

Our duties during the year in connection with the revolving fund created by section 210 of the Transportation Act, 1920, have been only such as are usually incidental to supervision by the Secretary of the Treasury of loans outstanding under this section.

During the year, $487,750 was repaid on the principal of such loans outstanding.

Since the effective date of the act, we have certified loans to carriers aggregating $350,600,667, of which $325,909,489.12 has been repaid, leaving an unpaid balance of $24,691,177.88, all of which has matured. Interest paid on loans amounts to $91,475,590.74. Interest in default to October 1, 1941, amounts to $13,559,227.98.

During the year we issued an amendatory order modifying in a minor particular our report and order issued in the preceding year to amend our certificate for a loan to the Seaboard-Bay Line.

A list of outstanding loans and of principal and interest due and in default appears in appendix F.

RECONSTRUCTION FINANCE CORPORATION ACT

Since our last report we have approved loans under the Reconstruction Finance Corporation Act aggregating $12,382,370 upon applications filed by four carriers. All these loans were such as to require, under the terms of the act, our certification that on the basis of present and prospective earnings the applicant might reasonably be expected to meet its fixed charges without reduction thereof through judicial reorganization. We also revoked, to the extent of $95,155.90, portions of loan approvals granted by us in prior years to three other carriers, the amount revoked in each case being the undisbursed balance of such prior approval.

Under the provisions of this act we have approved, upon applications of six carriers, the purchase of $27,609,583 of their securities by the Reconstruction Finance Corporation. This category includes an amount of $16,394,583 representing securities of the newly created Wabash Railroad Company, which are to be exchanged for a like amount of securities of the old Wabash Railway Company and its receivers as an adjustment or compromise of the claim of the Reconstruction Finance Corporation against the latter. This adjustment was approved pursuant to the provisions of section 5 (b) (3) of the act. During the year we also revoked, to the extent of $158,000,

a portion of a purchase approval granted by us in a prior year to another carrier. The aggregate amount of purchases approved by us ($27,609,583) includes an amount of $1,905,000 which may be exercised either through the purchase, or purchase and guaranty, or guaranty, of the applicant's securities by the Reconstruction Finance Corporation. A detailed statement will be found in appendix F.

The principal purposes for which loans have been approved during the year, and the total for each purpose, are approximately as follows:

Bond maturities, principal		$1,985,500
To effectuate a confirmed plan of reorganization:		
Purchase of properties of a lessor carrier	$1,500,000	
Payment of R. F. C. loans to debtor	1,707,442	
Payment of R. C. C. loans to debtor	1,139,428	
Additional working capital for new company	2,050,000	
		6,396,870
To effectuate a receivership plan of reorganization:		
Payment of portion of preferred claims against the old company, principal	699,400	
Payment of portion of bonds of the old company, principal	760,000	
Cash for bidding at foreclosure sale	100,000	
Reorganization expenses	100,000	
Improvement program	1,978,000	
Contingencies	362,600	
		4,000,000

The principal purposes for which purchases of applicants' securities have been approved during the year, and the total for each purpose, are as follows:

Purchase of equipment	$11,215,000
To effectuate a plan of receivership reorganization	16,394,583
(Securities of new company to be issued to R. F. C. in exchange for a like amount of securities of old company.)	

The aggregate net amount of loans, purchases of securities, and guaranties approved by us under this act is $881,872,336.62, inclusive of $6,000,000 approved under section 201 of the Emergency Relief and Construction Act of 1932.

Since work under the Reconstruction Finance Corporation Act was initiated in February 1932, applications for financial aid have been filed by 201 carriers or their receivers or trustees. Loans or other financial aid to 92 of these applicants were approved, some of the carriers receiving approval of more than 1 application. The applications of 23 others were approved but later were revoked. For various reasons we were unable to approve the applications of 47 carriers, and in the case of 37 others the applications were dismissed, usually with the consent of the applicants. The applications of 2 other carriers are under investigation.

We have approved the extension of the time of payment of 91 loans aggregating $523,084,414.16 upon applications filed by 38 carriers. Some of the carriers have applied for extensions on more than 1 loan and have had more than 1 extension of the same loan. Of these extensions, 88 were approved subsequent to June 19, 1934, the effective date of the amendment of section 5 of the act requiring as a condition precedent to such approval our certification that the carrier was not in need of reorganization in the public interest.

REIMBURSEMENT OF DEFICITS DURING FEDERAL CONTROL

Section 204 of the Transportation Act, 1920, was amended and reenacted by an act approved January 7, 1941. The amendment defines the term "deficit in its railway operating income," as that term is used in paragraph (a) of the original section, authorizes and directs this Commission to reopen all claims filed in compliance with its orders or regulations under this section and to ascertain and certify to the Secretary of the Treasury such amounts as may be payable to any such carriers under the amended provisions of this section, and fixes the maximum amount to be certified under its provisions.

The claims of 60 railroads were reopened under the amended section, and in the case of the Savannah & Southern Railway the proceeding under section 209 was also reopened for concurrent consideration under section 204 as amended. Five of the reopened claims, aggregating $171,323.34, have been certified by us for payment; 1, in the amount of $3,018.19, in the Savannah & Southern Railway case, has been certified in partial liquidation of an amount of $3,565.45 due from that company to the United States Government under section 209; 30 have been dismissed; and 24 are pending. In 8 of the pending cases we have served proposed reports on the carriers, while in the remaining 16 cases the claims are under further investigation. A detailed statement will be found in appendix F.

PROGRESS OF REORGANIZATIONS

Railroads in bankruptcy.—Since our last report, four additional proceedings for reorganization of railroad companies under section 77 of the Bankruptcy Act, as amended, have been instituted in district courts of the United States. One of these proceedings, involving the Florida East Coast Railway Company, was instituted upon petition filed by a group of creditors acting as a deposit committee for holders of an issue of the railway company's bonds. This carrier had been in receivership since September 1931.

The second proceeding, involving the Tampa Northern Railroad Company, was instituted upon petition filed by a bondholders' protec-

tive committee. The petition as yet has not been approved by the court as properly filed.

The third proceeding, involving the New Jersey & New York Railroad Company, was instituted in the New Jersey district court upon petition filed by a group of holders of the railroad company's securities. Since June 1938 this carrier has been a subordinate debtor in the proceedings before an Ohio district court for reorganization of the Erie Railroad Company and certain of the system companies; and that court, upon petition filed by the subordinate debtor's trustees for dismissal of proceedings for reorganization of the New Jersey & New York Railroad Company and for discharge of the trustees of its property and transfer thereof to another trustee or receiver in another court, approved, by order, the appointment by a court of competent jurisdiction of a receiver or trustee of the property of the New Jersey & New York Railroad Company in anticipation of the proceeding for reorganization of the subordinate debtor in the Ohio court being terminated and the trustees in such proceeding being discharged. The New Jersey court has ordered that the various parties in interest show cause why the petition in bankruptcy filed therein should not be approved as properly filed, but the answers in response thereto are not due until after the close of the period covered by this report.

The other proceeding was instituted through filing in a district court and with us of a petition for reorganization of the Prattsburgh Railway Corporation by certain of the creditors, but the petition was dismissed by the court. Thereafter, upon petition filed in a separate proceeding under section 1 (18) of the Interstate Commerce Act, we authorized abandonment of the entire line of this railroad. *Prattsburgh Ry. Corp. Abandonment,* 247 I. C. C. 151.

A list of all railroad reorganization proceedings before us, of which there are now 34, is shown in appendix G.

Our approved plans of reorganization have been confirmed during the past year by the respective courts of jurisdiction in proceedings involving the Akron, Canton & Youngstown Railway system (228 I. C. C. 645), the Chicago & North Western Railway Company (239 I. C. C. 613), the Erie Railroad system (240 I. C. C. 469), and the Kansas City, Kaw Valley & Western Railway Company (236 I. C. C. 137.) In none of these cases has actual consummation of the plan of reorganization been entirely completed.

Prior to confirmation, by the district court, of the plan of reorganization for the Akron, Canton & Youngstown Railway system, *supra*, the circuit court of appeals had affirmed the district court's decree approving the plan. The debtor and certain intervening parties have filed notices of appeal from the district court's decree confirming the plan of reorganization for the Chicago & North Western Railway Company, *supra.*

In the Erie Railroad system proceeding, we have approved and authorized, under section 77 (f) of the Bankruptcy Act, as amended, and under section 5 of the Interstate Commerce Act, the acquisition of the properties of the subsidiary debtor and of two subsidiary nondebtor companies by the principal debtor, and have authorized, under section 20 (a) of the Interstate Commerce Act, the issuance of certain securities and the assumption of obligations and liabilities by the principal debtor in connection with such acquisition, within the provisions of the confirmed plan of reorganization. We have under consideration similar authorization of the acquisition by the Erie Railroad Company of the properties of certain other nondebtor subsidiary companies.

In the Kansas City, Kaw Valley & Western Railroad Company case, *supra*, we have entered an order authorizing the reorganized company to acquire the debtor's property and to issue the securities and assume the obligations and liabilities contemplated in the plan.

During the period covered by our last report the respective courts of jurisdiction confirmed our plans of reorganization for the Chicago & Eastern Illinois Railway Company (233 I. C. C. 319), the Chicago Great Western Railroad Company (233 I. C. C. 63), and the Spokane International Railway system (233 I. C. C. 157). Since our last report, we have entered orders in the Chicago Great Western Railroad Company and the Spokane International Railway system proceedings authorizing the issuance of securities and assumption of obligations and liabilities provided for in the plans, and the acquisition of the debtors' properties by the reorganized companies. In the Chicago & Eastern Illinois Railway Company case, *supra*, the properties have been transferred to the reorganized company; and, by decree of the court, the trustee in bankruptcy and the reorganization managers have been discharged and the proceeding has been terminated, the court, however, reserving jurisdiction for the purpose of taking such action as may be necessary in connection with the disposition of one remaining claim.

In connection with the Arkansas Valley Interurban Railway Company proceeding we have previously reported our approval of the sale of the debtor's properties to a new company. Since our last report the court has found and decreed that all the property and assets of the debtor have been disposed of by the trustees in accordance with the orders of the court, and that the debtor's estate and affairs have been fully liquidated and the debtor corporation has been dissolved; whereupon the court ordered and decreed the discharge of the bankruptcy trustees.

The modified plan approved by us in *Denver & R. G. W. R. Co. Reorganization*, 239 I. C. C. 583, was disapproved by the court, and the proceedings were referred back to us with an opinion indicating

the judge's objections to our plan and describing a plan which he recommends.

Three plans of reorganization have been filed in two proceedings since our last report, of which plans one was filed by the trustees of a debtor, one by a bondholders' deposit committee, and one by the trustees of an estate owning large amounts of the debtor's bonds. No plans had been filed previously in these two proceedings.

Hearings have been held and concluded on plans of reorganization in proceedings of the Florida East Coast Railway Company and the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, and hearings were held and concluded in the Central of Georgia Railway Company case on the matter of a formula for segregation of earnings and expenses. The Denver & Rio Grande Western Railroad system proceeding was reopened and further hearing was held and concluded on the matter of a revision of the plan of reorganization previously approved by us, *supra*. In the Florida East Coast Railway Company proceeding we denied a petition for leave to intervene, denying also the request for oral argument on the petition.

Proposed reports on plans of reorganization were served during the year in proceedings of the Florida East Coast Railway Company, the Fonda, Johnstown & Gloversville Railroad Company, and the Minneapolis, St. Paul & Sault Ste. Marie Railway Company. Oral argument was heard in these three cases as well as in the case of the Alabama, Tennessee & Northern Railroad Corporation, in which latter proceeding a proposed report had been issued during the year covered by our last report. In addition, a proposed report and a supplement thereto were issued in the Denver & Rio Grande Western Railroad system case, this report containing the examiner's recommendations for a revision of the modified plan previously approved by us, *supra*, but disapproved by the court. Oral argument on this proposed plan has been assigned for a date subsequent to the close of the period covered by this report.

Final reports on plans of reorganization were issued during the year in proceedings of the Alabama, Tennessee & Northern Railroad Corporation (247 I. C. C. 453), the Fort Dodge, Des Moines & Southern Railroad Company (244 I. C. C. 625), the St. Louis Southwestern Railway system (249 I. C. C. 5), and the Yosemite Valley Railway Company (244 I. C. C. 189). We denied without hearing a petition for modification of our final report in the Fort Dodge, Des Moines & Southern Railroad Company case because the petition presented no new facts not heretofore considered; in 2 of the other cases just mentioned we have under consideration 13 petitions for modification and 3 replies thereto. Upon petition of an intervening party we extended the time for filing briefs in support of petitions for modi-

fication of our final report in the St. Louis Southwestern Railway system proceeding.

After argument and further hearings (heard during the year covered by our last report) we modified our final reports on plans of reorganization in the proceedings of the Boston & Providence Railroad Corporation (244 I. C. C. 341), and the New York, New Haven & Hartford Railroad system (244 I. C. C. 239), and in the latter case we issued a supplement to the modified final report (244 I. C. C. 521). Upon petitions, but without further hearings, we likewise modified our final reports in the proceedings of the Chicago, Rock Island & Pacific Railway system (— I. C. C. —) and the St. Louis-San Francisco Railway Company (242 I. C. C. 523), and in the former case we later issued a report on further consideration.

Final reports and modified final reports issued during the year were served on the parties and were certified to the respective courts of jurisdiction, and, in the cases of the Fort Dodge, Des Moines & Southern Railroad Company, *supra*, and the Yosemite Valley Railway Company, *supra*, our final reports have been approved by the courts. In the cases of the Erie Railroad system, *supra*, and the Missouri Pacific Railroad system (240 I. C. C. 15), the courts have likewise approved our modified final reports which had been certified to them during the preceding year. In the latter case, notices of appeal from the district court's order approving the plan have been filed. The plans of reorganization approved by the courts in the proceedings of the Chicago & North Western Railway Company, *supra*, the Erie Railroad system, *supra*, the Kansas City, Kaw Valley & Western Railroad Company, *supra*, and the Fort Dodge, Des Moines & Southern Railroad Company, *supra*, were submitted during the year to creditors and stockholders for their acceptance or rejection. The results of submission of the first three were certified to the respective courts of jurisdiction; the period fixed for voting on the plan of reorganization for the Fort Dodge, Des Moines & Southern Railroad Company has not yet terminated.

In the case of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, in which our modified final report had been approved by the court during the preceding year (240 I. C. C. 257), the debtor filed an appeal from the district court's order approving the plan and also obtained an order staying all proceedings, including submission of the plan. Notice and motion to dissolve the stay order, filed by us and by other parties, were denied by the circuit court of appeals; consequently submission in this case is still being withheld.

Appointments of two successor trustees, one successor cotrustee, and three cotrustees of the estates of debtor carriers have been ratified

by us during the year in five proceedings, in one of which we held a public hearing. In one of these proceedings we refused ratification of the appointment of a cotrustee.

Maximum limits of compensation of the trustees of the debtors, trustees' counsel and special counsel, and other parties and of reimbursement of expenses of parties, involved in reorganization proceedings have been approved by us in 21 proceedings, in 12 of which hearings, as required by section 77, were held during the year, and in 2 of which hearings had been held during the year covered by our last report. Other petitions in 3 of these proceedings are pending, as are petitions in 4 additional proceedings, hearings having been held in 4 of the 7 proceedings in which petitions are pending.

During the year we certified to the respective courts of jurisdiction copies of the record made before us on plans of reorganization in six proceedings, and copies of the record made before us on petitions for maximum allowances of compensation and expenses to the parties in one of the same proceedings and in five additional proceedings. Pursuant to the provisions of subsections (c) (11) and (e), we also certified to the courts certain costs incurred by us in five reorganization proceedings.

During the year, applications for subsection (p) authorization were filed by five protective committees in two reorganization proceedings and by two protective committees in one receivership proceeding. In two other receivership proceedings, the respective reorganization managers likewise filed applications for authority to act under the provisions of subsection (p). Hearings have been held on all but one of these applications, and authorization was granted in each case except upon the application of the reorganization managers in one receivership proceeding and upon the application of a protective committee in one reorganization proceeding, which are pending. Modifications of previous subsection (p) orders were issued in one of the above-mentioned reorganization proceedings and in four additional reorganization proceedings, and in the former proceeding, the application of an independent proxy committee to solicit proxies for the election of members of the debtor's board of directors was dismissed upon withdrawal of the application.

The two statistical compilations printed immediately below show the changes in capitalization, debt, and annual fixed charges under plans of reorganization approved by us or proposed by examiners in railroad-reorganization proceedings.

Change in capitalization under plans of reorganization approved by the Commission or proposed by examiners for railroads in reorganization proceedings before the Commission, as of October 31, 1941

	Capitalization before reorganization			Capitalization approved or recommended			Changes in capitalization	
	Long-term debt [1]	Stock	Total	Long-term debt	Stock	Total	Long-term debt	Stock
Plans approved by Commission								
	Thousands	*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Thousands*
Akron, C. & Y.[2]	$11,373	$5,730	$17,103	$3,997	$4,503	$8,500	−$7,376	−$1,227
Alabama, T. & N	4,038	1,534	5,572	1,972	[3] 11.96	1,972	−2,066	−1,534
Boston & P	2,170	3,996	6,166	(5)	(5)	[3] 11.96	−2,170	[3]+11.96
Chicago & E. I	42,681	45,891	88,572	28,072	15,354	(5)	−14,609	−30,537
Chicago & N. W	371,382	180,835	552,217	222,078	[3] 343.30	43,426	−149,304	[3]+343.30
Chicago G. W	42,669	92,283	134,952	27,190	106,996	[3] 343.30	−15,479	−73,839
Chicago, M., St. P. & P.[2]	508,047	119,307	627,354	224,038	[3] 1,209.00	329,074	−284,009	[3]+1,209.00
		[3] 1,175.32	[3] 1,175.32		35,902	[3] 1,209.00		−56,381
Chicago, R. I. & P.[2]	321,939	128,892	450,831	141,885	111,348	63,092	−180,054	−7,959
					[3] 2,131.48	335,386		[3]+956.16
Chicago, S. S. & S. B	5,369	9,110	14,479	1,554	75,000	[3] 2,131.48	−3,815	−53,892
					[3] 1,512.42	216,885		[3]+1,512.42
Copper Range	2,280	2,000	4,280		6,254	[3] 1,512.42	−2,280	−2,856
					[3] 122.00	7,808		[3]+122.00
Erie (incl. Chicago & E.)	[4] 281,086	214,868	[4] 495,954	191,277	3,280	[3] 122.00	−89,809	+1,280
					39,001	3,280		−175,867
Fort Dodge, Des M. & S	9,366	3,998	13,364	2,260	[3] 2,560.34	230,278	−7,106	[3]+2,560.34
					1,412	[3] 2,560.34		−2,586
Kansas City, K. V. & W	664	1,021	1,685	32	3,672	3,672	−632	−1,021
					[3] 9.00	32		[3]+9.00
Louisiana & N. W	2,169	2,300	4,469	969	969	[3] 9.00	−1,200	−2,300
					[3] 132.72	[3] 132.72		[3]+132.72
Missouri Pac.[2]	515,509	152,364	667,873	308,222	39,189	347,411	−207,287	−113,175
					[3] 2,130.68	[3] 2,130.68		[3]+2,130.68
New York, N. H. & H.[2]	321,950	231,233	553,183	[5] 233,640	[5] 144,321	[5] 377,961	−88,310	−86,912
Oregon, Pac. & E	374	200	574		151	151	−374	−49
					[3] 15.14	[3] 15.14		[3]+15.14
Reader	[6] 38	160	198	[6] 38	160	198		
St. Louis-S. F.[2]	287,603	114,711	402,314	116,071	61,846	177,917	−171,532	−52,865
					[3] 1,241.65	[3] 1,241.65		[3]+1,241.65
St. Louis S. W.[2]	68,865	37,080	105,945	37,500	37,500	75,000	−31,365	+420
Savannah & A	5,020	2,250	7,270	1,388	1,259	2,647	−3,632	−991
					[3] 10.00	[3] 10.00		[3]+10.00
Spokane International [2]	6,781	4,744	11,525	2,847		2,847	−3,934	−4,744
					[3] 28.46	[3] 28.46		[3]+28.46

See footnotes at end of table.

Change in capitalization under plans of reorganization approved by the Commission or proposed by examiners for railroads in reorganization proceedings before the Commission, as of October 31, 1941—Continued

	Capitalization before reorganization			Capitalization approved or recommended			Changes in capitalization	
	Long-term debt [1]	Stock	Total	Long-term debt	Stock	Total	Long-term debt	Stock
Plans approved by Commission– Continued	*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Thousands*
Western Pac	78,266	75,800	154,066	33,969	31,850 [3] 319.44	65,819 [3] 319.44	−44,297	−43.950 [3]+319.44
Yosemite Valley	2,343	1,645	3,988	1,159	1,159	2,318	−1,184	−486
Examiners' proposed plans								
Denver & R. G. W.[2]	153,532	16,446 [3] 300.46	169.978 [3] 300.46	97,331	29.014 [3] 428.40	126,345 [3] 428.40	−56,201	+12.568 [3]+127.94
Florida East Coast	58,116	37,500	95,616	17,616	[3] 495.00	17,616 [3] 495.00	−40,500	−37.500 [3]+495.00
Fonda, J. & G.[3]	6,685	3,050	9,735	1,235	[3] 11.65	1,235 [3] 11.65	−5,450	−3.050 [3]+11.65
Minneapolis, St. P. & S. S. M	130,768	37,810	168,578	32,793	[3] 719.32	32.793 [3] 719.32	−97,975	−37.810 [3]+719.32
Total	3,241,083	1,526,758 [3] 1,475.78	4,767,841 [3] 1,475.78	1,729,133	745,499 [3] 13,431.96	2,474.632 [3] 13,431.96	−1,511,950	−781.259 [3]+11,956.18

[1] Includes the principal amount of certain notes and bonds which before reorganization were classified in the balance sheet as current liabilities, but which are to be funded in the plan approved or recommended. Does not include unpaid interest.

[2] Includes obligations of subsidiary companies, as shown in the plan approved or recommended.

[3] No-par stock in thousands of shares.

[4] Excludes securities of Nypano. The plan provides that the latter company be reorganized separately, its bonds and stocks to be undisturbed, and its present lease by the Erie to be continued, rental being $340,000 annually; consolidation with Erie is permitted.

[5] N. Y., N. H. & H. includes, in appropriate columns, the following to be issued in acquisition of Boston & Providence properties: $3,039,213 fixed-interest bonds, $1,467,520 income bonds, and $1,467,520 preferred stock.

[6] In this case judgment for damages, $37,673.84 plus interest, which caused the reorganization, settled for $5,000 in cash and $38,400 in notes.

Changes in debt and annual fixed charges under plans of reorganization approved by the Commission, or proposed by examiners, for railroads in reorganization proceedings before the Commission, as of October 31, 1941

	Debt [1]			Annual fixed charges [2]		
	Before reorganization [3]	After reorganization	Reduction	Before reorganization	After reorganization	Reduction
Plans approved by Commission						
Akron, C. & Y.[4]	$13,312,581	$3,997,500	$9,315,081	$364,956	$170,965	$193,991
Alabama, T. & N.	4,903,695	1,972,490	2,931,205	239,462	16,000	223,462
Boston & P.	2,338,186	(5)	2,338,186			
Chicago & E. I.	67,020,834	28,071,500	38,949,334	2,248,798	662,869	1,585,929
Chicago & N. W.	431,390,104	222,078,460	209,311,644	16,549,740	3,382,079	13,167,661
Chicago G. W.	48,050,452	27,190,268	20,860,184	1,898,783	849,000	1,049,783
Chicago, M., St. P. & P.[4]	626,926,331	224,037,950	402,888,381	14,954,451	4,269,654	10,684,797
Chicago, R. I. & P.[4]	429,738,085	141,884,976	287,853,109	14,799,677	2,181,386	12,618,291
Chicago, S. S. & S. B.	5,604,447	1,553,800	4,050,647	334,117	106,503	227,614
Copper Range	2,280,000		2,280,000	107,975	600	107,375
Erie (incl. C. & E.)	304,981,178	191,277,279	113,703,899	13,593,536	7,520,226	6,073,310
Fort Dodge, D. M. & S.	10,186,591	2,260,000	7,926,591	305,138	8,300	296,838
Kansas City, K. V. & W.	717,062	31,895	685,167	25,676	1,500	24,176
Louisiana & N. W.	2,319,394	968,980	1,350,414	112,413	34,822	77,591
Missouri Pac.[4]	660,897,056	308,221,500	352,675,556	24,770,052	7,341,804	17,428,248
New York, N. H. & H.[4]	363,434,572	[5] 233,640,246	129,794,326	13,521,947	6,419,666	7,102,281
Oregon, Pac. & E.	914,674		914,674	16,501		16,501
Reader	43,400	38,400	5,000	2,595	2,400	195
St. Louis-S. F.[4]	373,727,922	116,071,204	257,656,718	12,613,106	3,030,735	9,582,371
St. Louis S. W.[4]	83,304,493	37,500,014	45,804,479	3,108,980	1,527,291	1,581,689
Savannah & A.	8,106,805	1,388,000	6,718,805	251,968	81,498	170,470
Spokane International [4]	7,996,994	2,846,400	5,150,594	273,155		273,155
Western Pac.	95,698,299	33,969,125	61,729,174	3,634,750	494,202	3,140,548
Yosemite Valley	3,102,936	1,159,000	1,943,936	116,938		116,938
Examiners' proposed plans						
Denver & R. G. W.[4]	195,760,452	97,330,897	98,429,555	6,608,785	2,378,499	4,230,286
Florida East Coast	82,491,000	17,616,000	64,875,000	2,908,061	483,480	2,424,581
Fonda, J. & G.[4]	7,803,753	1,235,305	6,568,448	150,311	24,780	125,531
Minneapolis, St. P. & S. S. M.	160,850,167	32,792,905	128,057,262	8,680,071	54,860	8,625,211
Total	3,993,901,463	1,729,134,094	2,264,767,369	142,191,942	41,043,119	101,148,823

[1] Does not reflect current operating obligations to be assumed by the new company.
[2] Fixed charges include rent for leased roads and equipment, fixed interest on funded debt, interest on unfunded debt, and amortization of discount on funded debt. Charges for depreciation on equipment are reflected in operating expenses deducted in determining net ncome.
[3] Includes unpaid interest, dividends, etc.
[4] Includes obligations of subsidiary companies, as shown in the plan approved or recommended.
[5] N. Y., N. H. & H. includes $4,506,733 of bonds to be issued in acquisition of the Boston & Providence properties.

Railroads in receivership.—A list of the railroads in charge of receivers is shown in appendix G to this report.

As indicated in our previous report, the Norfolk Southern Railway Company was authorized on April 19, 1940, in *Norfolk S. R. Co. Receivership*, 240 I. C. C. 99, to acquire the properties of the Norfolk Southern Railroad Company and to issue securities. Although the properties of the Norfolk Southern Railroad Company were sold under foreclosure on April 30, 1941, and the sale was confirmed on May 16, 1941, the authorizations granted on April 19, 1940, have not yet been exercised, and the receivership proceedings are still pending.

We heretofore stated that a report was being drafted in regard to the proposed receivership reorganization of the Minneapolis & St. Louis Railroad Company. On March 4, 1941, in *Minneapolis &*

St. L. R. Co. Reorganization, 244 I. C. C. 357, the Minneapolis & St. Louis Railway Company and the Minneapolis & St. Louis Railroad Corporation were authorized to purchase specified parts of the line of railroad of the Minneapolis & St. Louis Railroad Company. Authority was also granted to the Minneapolis & St. Louis Railway Company to issue not exceeding $4,000,000 of first-mortgage 4-percent bonds, $2,081,500 of second-mortgage income bonds, series A, and 150,000 shares of common capital stock without par value, and to the Minneapolis & St. Louis Railroad Corporation to issue 10,000 shares of common capital stock without par value. The various authorizations granted to consummate the reorganization of the Minneapolis & St. Louis Railroad Company have not been exercised, and receivership proceedings are still pending. There are also pending with us certain petitions for modification of the authority heretofore granted. These matters will be disposed of within a reasonable time, and the applicants will then be in position to proceed with reorganizing the properties.

The application for authority to reorganize the properties of the Wabash Railway Company, which was pending on November 1, 1940, was subsequently amended several times, and hearings were held thereon. On July 29, 1941, a report was issued wherein certain findings were made but no order was entered. These findings included the conditional approval of the purchase by the Wabash Railroad Company of the properties and other assets of the Wabash Railway Company, and the acquisition and control by it through purchase of capital stock of certain other railroad companies. It was also conditionally found that the proposed issue of 598,186 shares of common stock without par value, $31,106,677 of preferred stock, $39,220,071 of income bonds, $9,066,411 of secured notes, and $47,354,241 of mortgage bonds, and the assumption of obligation and liability in respect of $8,540,000 of equipment obligations and $2,075,000 of mortgage bonds, met the requirements of the findings which we must make under section 20a (2) of the Interstate Commerce Act. By a separate report, order, and certificate, also dated July 29, 1941, the adjustment or compromise of the claim of the Reconstruction Finance Corporation against the Wabash Railroad Company and its receivers was approved. Upon the Wabash Railroad Company's complying with the conditions contained in the report of July 29, 1941, further proceedings will be held and the requisite report and order issued.

On October 3, 1940, the Winchester & Western Railroad Company applied for authority to purchase and operate the line of railroad of the Winchester & Wardensville Railroad Company, and on June 6, 1940, as subsequently amended, it applied for authority to issue

$25,000 of capital stock and $25,000 of income mortgage bonds. A hearing on these applications has been held, and on January 25, 1941, in *Winchester & W. R. Co. Purchase*, 244 I. C. C. 150, and on January 27, 1941, in *Winchester & W. R. Co. Securities*, 244 I. C. C. 153, the Winchester & Western Railroad Company was authorized to purchase the properties of the Winchester & Wardensville Railroad Company which had been sold at foreclosure sale and to issue the securities in the amounts sought. The exercise of these authorizations terminated the receivership of the Winchester & Wardensville Railroad Company.

By report and certificate of November 29, 1940, we authorized the abandonment of the Wichita Northwestern Railway Company of its entire line of railroad of 99.47 miles, which had been operated by a receiver since 1922. *Wichita N. W. Ry. Co. Receiver Abandonment*, 242 I. C. C. 613.

BUREAU OF FORMAL CASES

The formal complaints filed numbered 180, of which 160 were original complaints and 20 were subnumbers, a decrease of 46 as compared with the previous period. We decided 285 cases, and 131 have been dismissed by stipulation or on complainants' request, making a total of 416 cases disposed of, as compared with 523 during the previous period.

Approximately 69 formal and investigation and suspension cases have been reopened for further hearing and reconsideration.

We conducted 772 hearings and took approximately 88,939 pages of testimony, as compared with 577 hearings and 97,658 pages of testimony during the preceding period.

The following statement shows certain facts with respect to the condition of this docket as of October 31 of the years indicated:

	1938	1939	1940	1941
Formal complaints filed	255	222	216	160
Subnumbers	36	20	10	20
Investigation and suspension cases instituted	124	180	108	230
Cases under submission at end of period:				
Regular docket	95	145	78	112
Shortened procedure	26	32	14	21
Cases disposed of, including subnumbers and reopened cases	526	689	594	[1] 458
Number of pending cases	554	588	471	523

[1] Does not include the following cases disposed of by formal reports: 157 covering fourth-section applications; 13 covering ex parte proceedings; 5 covering questions arising under the provisions of the Railway Labor Act; and 8 covering applications of water carriers for exemption from the provisions of part III of the act.

SHORTENED PROCEDURE

Approximately 41 percent of the total number of formal complaints were handled by the shortened procedure method as compared with 30, 35, and 34 percent during the three preceding years. In

cases so handled and decided during this year, the average elapsed time to reach a decision was 337 days from the receipt of complaint and 193 days from receipt of the final memorandum. The corresponding periods during the three preceding years were 332 and 194, 373 and 231, and 359 and 220 days, respectively. The following statement gives details concerning the docket as of October 31 of the years indicated:

Explanation	1938	1939	1940	1941
Suggested for handling under the shortened procedure, either by us or by the parties	149	107	113	77
Method not accepted by one or more of the parties	40	28	34	20
Agreement subsequently reached by the parties, making further formal proceedings unnecessary:				
Before service of complainant's memorandum	9	10	2	4
After service of complainant's memorandum	4	4	2	0
Complaints withdrawn	6	9	6	6
Dismissed for want of prosecution	0	0	0	1
Decided	67	73	69	57
Pending in various stages short of submission	60	35	53	32
Pending under submission at end of period	26	32	14	21
Total pending cases	86	67	67	53

BUREAU OF INFORMAL CASES

The number of informal complaints received was 645, a decrease of 42. The rail carriers filed 2,825 special-docket applications for authority to refund amounts collected under the published tariffs and admitted by them to have been unreasonable, a decrease of 66. Orders authorizing refunds were entered in 2,496 cases, a decrease of 167, and reparation thereunder was awarded in the sum of $417,151.65. In addition, 275 cases were dismissed or disposed of without orders. The Bureau also handled approximately 6,000 letters, many of which had the characteristics of informal complaints although not classified as such. Others sought general information and informal rulings upon the rights and obligations of the public and common carriers under existing statutes.

BUREAU OF INQUIRY

Our staff of attorneys and special agents in this Bureau directed and conducted during the year more than 150 investigations of alleged violations of part I of the Interstate Commerce Act and related statutes. They also directed and conducted several investigations of alleged violations of part III of the act, the provisions of which became effective during the year. Other investigations were made to develop evidence for presentation at hearings in important formal-docket proceedings which were instituted on our own motion and in disbarment proceedings in which alleged unethical conduct of practitioners before the Commission was in issue.

The information disclosed by our investigations points strongly to the fact that at many of the larger cities, receivers of perishables make it a practice to file with the railroads false claims for alleged damage to shipments in transit. Prosecutions for this offense, based on evidence developed by our special agents, were instituted at San Francisco during the year against seven produce dealers located at New York whose claims were filed with originating carriers on the Pacific coast. Pleas of guilty were entered by three of the defendants, and fines aggregating $21,000 were imposed. One of the defendants was convicted upon trial and was sentenced to pay a fine of $21,000. Indictments against three of the defendants still are pending.

The claims upon which these prosecutions were founded related to shipments of leafy vegetables. Portions of the contents of those shipments became frosted during the course of transportation, but no loss in the sale of such shipments resulted from that frosted condition. Nevertheless, claimants represented to the carriers that they had suffered loss, and in order to support that position, they submitted with their claims certified false account sales which purported to show that those portions of the shipments which had been frosted were sold for lower prices than portions which had not been frosted. As a matter of fact there was no segregation of the different portions when sales were made, and the same price per package was received for all. The carriers, by paying claims of this type, suffered serious losses of revenue, and honest competitors of these claimants, who did not resort to such practices, suffered gross discrimination.

Other means of depleting railroad revenues, to which certain of the carriers were parties, were found to exist at numerous points throughout the country in connection with the ordering and furnishing of cars for transportation. Shippers who desired and were furnished cars of one length obtained transportation of shipments loaded therein at freight charges which were lower than those lawfully applicable by resorting to the subterfuge of inserting on bills of lading a false notation to the effect that a shorter car than that furnished was ordered, and that the longer car was furnished for carrier's convenience. The railroads executed such bills of lading notwithstanding the fact that they were in a position to supply the shorter cars if the shippers actually had ordered that equipment, and they computed and collected freight charges on the basis of the minimum weight provided by tariff for shipments transported in the shorter car represented as having been ordered, instead of on the basis of the minimum weight applicable for shipments transported in the longer car actually ordered and furnished. Based on this practice, 35 prosecutions for granting and accepting concessions on shipments of cotton linters were insti-

tuted in 3 different judicial districts. Railroads were named as defendants in 16 of these instances and shippers in 19 instances. Fines aggregating $96,200 were imposed and paid upon pleas of guilty by all defendants. Prosecutions brought in another district against 3 railroad defendants for the granting of similar concessions on shipments of farm implements resulted in pleas of guilty and the imposition and payment of fines totaling $9,000.

In other instances, where the shippers actually desired and obtained two cars for the loading of shipments, they defeated the lawful freight charges by resorting to the practice of inserting on bills of lading, which were executed by the carriers, a false notation indicating that one long car had been ordered and that two shorter cars were furnished for carrier's convenience, when, in fact, the carriers had available an adequate supply of the longer cars, and in certain instances were required to move such equipment from the shippers' plants to make room for the shorter cars. Instead of imposing freight charges applicable on the basis of the minimum weights published for the two cars furnished, the carriers collected charges computed at the minimum weight applicable in connection with the longer car which was represented to have been ordered by the shippers. Eight indictments based on this practice were returned during the year against carriers and shippers, and, upon pleas of *nolo contendere* by all of the defendants, fines aggregating $49,000 were imposed and paid. The offenses charged in these indictments were the granting and the receiving of concessions by the carriers and shippers, respectively, and the making by the carriers of false entries in their waybills.

In still another instance, false notations on livestock contracts concerning the type of equipment ordered were used by railroads as a foundation for collection of less than the lawful charges. A shipper who desired two single-deck cars for the loading of his shipments, and who had no facilities for the loading of double-deck cars, nevertheless obtained transportation at the lower rates applicable when shipments are transported in double-deck cars, on the premise, which the carrier knew to be false, that two single-deck cars had been furnished for carrier's convenience in lieu of a double-deck car ordered. Pleas of guilty were entered to informations filed against a carrier and a shipper for engaging in this practice, and fines totaling $6,000 were imposed and paid.

The delivery by railroad companies of order-notify and "advise" shipments in advance of the surrender of bills of lading and of delivery orders is a practice which was shown by our investigations to have been engaged in extensively at several points. Indictments based thereon against five carriers and three carrier officials, three shippers, and one private-car company were returned during the year. Three

of the carrier defendants pleaded guilty and paid fines totaling $12,000. The other indictments still are pending. The defendants were charged with granting and accepting concessions whereby an advantage was given and a discrimination practiced in respect of the transportation of shipments of produce. The carriers involved delivered many of such shipments to the "advise" party named in the bills of lading in advance of the surrender by that party of the order from the consignor authorizing the carrier to make such delivery. That order had been attached to a draft and sent to a bank at the billed destination for surrender to the "advise" party when the draft was paid. By obtaining dominion over the shipments in advance of the payment of the drafts, the "advise" parties in effect were able to dispose of the shipments and thus do business with the consignors' funds; and at the same time the carriers were placed in the position of being responsible to the consignors for the value of the shipments if the "advise" parties ultimately failed to honor the drafts and obtain possession of the delivery orders. Certain of the carrier defendants continued the practice of making such deliveries after they had been required to pay substantial sums to consignors because of the failure of "advise" parties to honor drafts.

One receiver of produce, previously indicted for obtaining delivery of "advise" shipments by means of the presentation to a carrier of false delivery orders which the carrier in good faith accepted as genuine, pleaded guilty during the year and paid a fine of $1,000.

Another scheme resorted to by shippers for defeating published charges is the furnishing of false reports of weights. One shipper of packing-house products which was found to have engaged in this practice extensively was fined $10,000 after entering a plea of guilty to an information filed against it.

As the result of another investigation which disclosed that numerous shippers of grapes from California points had defrauded the railroads of large amounts of revenue, six of those shippers, and two former railroad inspection bureau employees who acted in collusion with them, were indicted recently. Three of the shipper defendants have pleaded guilty but sentence has not yet been imposed. The indictments still are pending as to the other defendants. The shippers indicted, as well as other shippers against whom no court action has yet been taken, followed two practices in perpetrating frauds upon the carriers. In certain instances they changed the figures appearing in public weighmasters' reports of weights so as to make it appear that the weights shown on shipping orders were correct. In other instances they falsely represented on the shipping orders the size of the containers in which the grapes were packed, with the result that the carriers applied estimated weights provided by tariff for

containers of one size, when higher estimated weights for larger containers should have been adopted as the basis for computing freight charges.

Failure of shippers to observe tariffs granting transit privileges was disclosed by our investigations. In one case, a corporation which owned or controlled a number of flour mills in different sections of the country sold flour produced at certain of those mills to customers at a point where another of its mills was located. Instead of consigning that flour to its customers direct, it resorted to the subterfuge of billing the shipments to its last-mentioned mill. The purposes of doing this were (1) to record for transit privileges applicable at the point in question the freight bills for those shipments, and (2) to use those bills against other shipments of flour forwarded from this particular mill to destinations beyond. In this manner it avoided payment of the local rate on the last-mentioned shipments, and was able to obtain transportation thereof at the balance of through rates applicable from the points of origin named in the freight bills referred to above. The recording of those bills for transit privileges, and their subsequent use against other shipments of flour from the transit point, were prohibited by the effective tariff, which provided that the privileges named therein were not applicable to flour which was not blended or otherwise processed at the transit point. A fine of $1,000 was imposed upon this corporation upon a plea of guilty to an information filed against it.

Another transit tariff, which was applicable on potatoes, was violated by a number of shippers. Instead of paying the local rate from the transit point to destinations beyond on potatoes which had not been unloaded in warehouses at that point, those shippers obtained transportation at the balance of through rates applicable from points of origin in back of the transit point by falsely representing that such potatoes had been unloaded in those warehouses and hence were entitled to the privileges named in the tariff. They also engaged in the practice of purchasing from other shippers freight bills for inbound shipments of potatoes to the transit point and using those bills against out-bound shipments, notwithstanding the fact that under the tariff such bills could not be so used by the purchaser because there was no bona fide sale to him of the tonnage represented by the bills so purchased. Ten indictments were returned during the year against these shippers and a traffic consultant who aided them in their transactions. These indictments are pending.

One investigation brought to light a scheme by which shippers obtained concessions from private-car companies. Shipments were tendered to railroad companies in tank cars owned by those companies which had been rented to the shippers. The railroads paid to

the owners of this equipment mileage allowances for the use thereof in the performance of transportation over their rails, and the private-car companies turned over portions of such allowances to the shippers. Such payments to the shippers, instead of being made directly, were given by the private-car companies to dummy companies which had been set up for this purpose. The amounts thus paid were substantially in excess of the rentals paid by the shippers to the private-car companies for the use of the equipment. Thus the effect of the arrangement was to place the shippers in a position where they received transportation at less than the lawful rate. Informations were filed against two private-car companies and one officer of a corporation shipper. Upon pleas of guilty by the three defendants fines totaling $35,000 were imposed and collected.

In two instances shippers were found to have perpetrated frauds in connection with the issuance and use of false bills of lading. Indictments were returned in both cases. One of the defendants pleaded guilty and was placed on probation for a period of 3 years. The other indictment is pending.

A forfeiture suit, mentioned in a former report, which was brought under section 1 of the Elkins Act against a large corporation and two of its subsidiaries to recover three times the amount of a rebate received by those companies from two railroad companies and a terminal company operated by them, was settled during the year by the payment by defendants to the United States of $125,000 and the filing with the court of a stipulation of dismissal signed by all parties. The rebate or offset from the published rate which the defendants were alleged to have obtained flowed from the exclusive use by them without charge of valuable unloading machinery and other property of the carriers in connection with the transfer by defendants of imported bauxite ore from vessels to railroad cars at Westwego, La., for rail transportation from that point to St. Louis, Mo.

An important decision was rendered by the Supreme Court during the year in a proceeding to which reference was made in our last report. In *Union Pac. R. Co.* v. *United States*, 313 U. S. 450, a permanent injunction which had been issued by the United States District Court for the Western District of Missouri was sustained with certain modifications. This proceeding was instituted by the Attorney General, at our request, against the Union Pacific Railroad Company, the city of Kansas City, Kans., and several of its officials, and a number of other defendants, including produce dealers at Kansas City, Mo., to restrain certain of those defendants from granting, and the others from receiving, concessions flowing from the efforts of the defendant railroad and the city of Kansas City, Kans., and its officials to induce the produce-dealer defendants to move their places of

business from Kansas City, Mo., to a new produce terminal at Kansas City, Kans., which was constructed by that city with funds provided by the Public Works Administration and funds derived from the sale of $3,000,000 of income bonds to the Union Pacific. Pertinent excerpts from the opinion of the court will be found herein under the heading "Bureau of Law."

For violations of the act and related acts, 56 indictments were returned and 35 informations were filed. Sixty-nine cases were concluded in the district courts and resulted in the imposition of fines totaling $388,202, of which no part was suspended.

Prosecutions instituted and concluded were distributed over the following States: Arkansas, California, Georgia, Illinois, Louisiana, Minnesota, Nebraska, New York, North Carolina, Texas, Virginia, West Virginia, and Wisconsin.

A summary (*a*) of the indictments returned and informations filed in the United State district courts and (*b*) of cases concluded in those courts is set forth in appendix A.

BUREAU OF LAW

On October 31, 1940, there were pending in the courts 32 cases involving our orders or requirements. During the year, 46 cases were instituted and 28 were concluded, leaving 50 cases now pending. Of these, 11 are in the Supreme Court of the United States, 5 are in the Circuit Court of Appeals for the Seventh Circuit, 1 is in the Circuit Court of Appeals for the Eighth Circuit, and 33 are in the district courts of the United States.

Six cases were submitted and decided in the Supreme Court, 1 was discontinued in the Circuit Court of Appeals for the Sixth Circuit, and 21 were concluded in the district courts. Summaries of all the foregoing cases are shown in appendix B.

The cases decided by the Supreme Court were:

Consolidated Rock Products Co. v. *duBois*, 312 U. S. 510.

This case involved the fairness of a plan of reorganization under section 77B of the Bankruptcy Act, wherein we filed a brief *amicus curiae*. Important passages from the Court's opinion are:

> But equity will not permit a holding company, which has dominated and controlled its subsidiaries, to escape or reduce its liability to those subsidiaries by reliance upon self-serving contracts which it has imposed on them. A holding company, as well as others in dominating or controlling positions (*Pepper* v. *Litton*, 308 U. S. 295), has fiduciary duties to security holders of its system which will be strictly enforced. (*Id.* 522).
>
> The Circuit Court of Appeals held that the absolute priority rule of *Northern Pacific Railway Co.* v. *Boyd*, *supra*, and *Case* v. *Los Angeles Lumber Products Co.*, *supra*, applied to reorganizations of solvent as well as insolvent companies. That is true. Whether a company is solvent or insolvent in either the equity or the bankruptcy sense, "any arrangement of the parties by which the sub-

ordinate rights and interests of the stockholders are attempted to be secured at the expense of the prior rights" of creditors "comes within judicial denunciation". *Louisville Trust Co.* v. *Louisville, New Albany & Chicago Ry. Co.*, 174 U. S. 674, 684. And we indicated in *Case* v. *Los Angeles Lumber Products Co., supra*, that that rule was not satisfied even though the "relative priorities" of creditors and stockholders were maintained (pp. 119–120).

The instant plan runs afoul of that principle. (*Id.* 527).

The Circuit Court of Appeals, however, made certain statements which if taken literally do not comport with the requirements of the absolute priority rule. It apparently ruled that a class of claimants with a lien on specific properties must receive full compensation out of those properties, and that a plan of reorganization is *per se* unfair and inequitable if it substitutes for several old bond issues, separately secured, new securities constituting an interest in all of the properties. That does not follow from *Case* v. *Los Angeles Lumber Products Co., supra.* If the creditors are adequately compensated for the loss of their prior claims, it is not material out of what assets they are paid. So long as they receive full compensatory treatment and so long as each group shares in the securities of the whole enterprise on an equitable basis, the requirements of "fair and equitable" are satisfied.

Any other standard might well place insuperable obstacles in the way of feasible plans of reorganization. Certainly where unified operations of separate properties are deemed advisable and essential, as they were in this case, the elimination of divisional mortgages may be necessary as well as wise. Moreover, the substitution of a simple, conservative capital structure for a highly complicated one may be a primary requirement of any reorganization plan. There is no necessity to construct the new capital structure on the framework of the old. (*Id.* 530–531).

Scandrett et al., Trustees v. *United States*, 312 U. S. 661.

This case involved the validity of our order of September 25, 1939, in Investigation and Suspension Docket No. 4614, *Petroleum Between Washington, Oregon, Idaho, Montana*, 234 I. C. C. 609, wherein we found unreasonably low reduced rail rates on refined petroleum products, in bulk, moving from Portland and Linnton, Oreg., and from other points in the State of Washington, to destinations in Idaho and Washington east of the Cascade Mountains. The lower court had affirmed our decision therein, 32 Fed. Supp. 995, and after hearing oral argument on March 5, 1941, the Supreme Court affirmed the decision of the lower court on March 10, 1941, in a per curiam opinion, which merely cited prior decisions of that Court and referred to certain sections of the Interstate Commerce Act.

Mitchell v. *United States*, 313 U. S. 80.

This case involved the validity of our order of November 7, 1938, in Docket No. 27844, *Mitchell* v. *Chicago, R. I. & P. Ry. Co.*, 229 I. C. C. 703, wherein complainant, a Negro resident of Chicago, Ill., and a member of the House of Representatives of the United States, alleged, in effect, that defendants, in connection with their purported compliance with an Arkansas statute requiring segregation of the races during transportation, do not provide as desirable accommodations for colored as for white passengers traveling in Arkansas

over the line of the Rock Island at first-class fares from Chicago, Ill., to Hot Springs, Ark., and that this resulted in unreasonable charges and unjust discrimination in violation of the various provisions of the Interstate Commerce Act. In a divided opinion we found that the present accommodations for passengers over the line and route described were not unjustly discriminatory or unduly prejudicial and dismissed the complaint. The lower court, without writing an opinion, sustained our order. An appeal was taken to the Supreme Court of the United States, which on April 28, 1941, in an opinion by Chief Justice Hughes, reversed the action of the lower court and concluded that under the facts in this case, Mitchell was discriminated against in denying him, solely on account of his color, the equality of treatment to which the Constitution entitles every citizen, and that this was in violation of the Interstate Commerce Act. The question of the right of States to segregate was not dealt with in the opinion.

Hudson & Manhattan R. Co. v. *United States*, 313 U. S. 98.

This case involved the validity of our order of July 11, 1938, in Investigation and Suspension Docket No. 4394, *Passenger Fares of Hudson & M. R. Co.*, 227 I. C. C. 741, wherein we refused permission to the carrier to increase its fare from 6 to 10 cents and authorized an increase to 8 cents. From a decision of the lower court sustaining our order (33 Fed. Supp. 495), an appeal was taken to the Supreme Court, which affirmed the action of the lower court and sustained our order in an opinion which concluded that the question of whether the carrier's revenues would be better under an 8-cent fare than under a 10-cent fare was a question for our judgment, that we had evidence before us sufficient to sustain that conclusion, and that our findings were adequate to support the order.

Union Pacific R. Co. v. *United States*, 313 U. S. 450.

This case involved the legality of the removal of produce terminals from Kansas City, Mo., to Kansas City, Kans., and the question whether, as a result of negotiations entered into between the railroad company, the city of Kansas City, Kans., and the produce terminals, there was a violation of the Elkins Act. Investigation by our staff revealed, in our opinion, a violation of that act, whereupon injunction proceedings were brought in the district court, which granted the relief sought. On appeal by defendants, the Court, on June 2, 1941, in a 5–3 opinion, substantially sustained the decision of the district court, and from an opinion filed on that date we quote the following pertinent holdings:

> Obviously a bonus paid by a railway to induce a prospective shipper to locate along its line would be as much a concession under the statute as a reduction in tariff applicable only to the favored shipper. We are of the opinion that such a payment by a person who is not a carrier, if it is a payment "in respect to transportation," would be equally violative of the section in question.

The first prohibition makes it unlawful "for any person or corporation" to give or receive the concession. The appellants' argument that only carriers or shippers are covered is based on the clause stating the punishment to be applicable whether the alleged violator is "carrier or shipper." Such an argument assumes that the carrier and shipper clause restricts the ordinary meaning of "any person." No reason is advanced for such a restriction. As has been set out, there has been a well defined and continuous purpose to eliminate preferences to shippers from our system of transportation for reasons of fairness and to avoid rate wars, detrimental to the efficiency of the carriers. The words stressed by appellants as restrictive were added by the Hepburn Act as an amendment to Section 1 of the Elkins Act to make clear that the earlier phrase "any person, persons or corporation" included shippers as well as carriers. In our view, action by any person to bring about discriminations in respect to the transportation of property is rendered unlawful by the Elkins Act. Any other conclusion would do violence to a dominant purpose of carrier legislation. (*Id.* 462–463).

Thus it is understandable that city and railroad might individually and even cooperatively work hand in hand to promote the city's economic welfare without violating the Elkins Act. But the promotion of civic advancement may not be used as a cloak to screen the granting of discriminatory advantages to shippers. * * * (*Id.* 465).

Enough has heretofore been stated to support fully the conclusion that some shippers obtained agreements from the City committee on negotiations for concessions in return for moving into the new market. In determining whether the concessions were in respect to transportation, the cooperative functioning of railway and City, transportation and municipal officers become significant. The phrase "in respect to transportation" has not a technical connotation. It differs from intent or purpose to affect transportation. * * * While, as has been stated, it is the result and not the purpose which determines the illegal character of advantages granted shippers, when there is a purpose or plan for securing traffic, developed cooperatively by a carrier and others, the purpose makes clear that the concessions offered are in respect to transportation. (*Id.* 465–466).

Railroad influence pervaded each City action and in those circumstances, the decree must be molded to meet the danger of subtle moves against the equality between shippers guaranteed by the Elkins Act. (*Id.* 470).

Sprague, Receiver, v. *Woll, United States Attorney and Interstate Commerce Commission*, 314 U. S.—.

In this case the Circuit Court of Appeals for the Seventh Circuit sustained our report and order of July 11, 1939, in Railway Labor Act Docket No. 7, *Chicago, N. S. & M. R. Co.*, 234 I. C. C. 13, determining the status of the Chicago, North Shore & Milwaukee Railroad Company under the Railway Labor Act (see 122 Fed. (2d) 128). On October 20, 1941, the Supreme Court denied petition for writ of certiorari to review this decision, thus declining to disturb it.

Other decisions of interest to us in connection with our work were:

Palmer v. *Connecticut Railway & Lighting Co.*, 311 U. S. 544.

As explained by the Court in its opinion in this case, it involved "problems of proving a lessor's claim for damages for rejection of its lease in a proceeding under section 77 of the Bankruptcy Act."

The lease had 999 years to run from 1906, and was rejected in 1935 by the trustees of the debtor.

After pointing out that "Litigation over a 999-year lease naturally brings up incidents difficult to reconcile with known and established legal formulae," the Court said:

> The law for purposes of damages does not treat a broken lease of a thousand years as though it ran only for a limited time, the damages for which are measurable. But since evidence of the damage is necessarily limited to a time of "definite forecasts" the rule of rental value permits the use of data for only a limited number of years to determine damages. (*Id.* 557).

In discussing present market value, the Supreme Court said:

> Present market value of property is but the resultant of the prediction of many minds as to the usability of property and probable financial returns from that use, projected into the future as far as reasonable, intelligent men can foresee the future.
>
> The proof of future profits by the evidence of past profits in an established business gives a reasonable basis for a conclusion. (*Id.* 559).

Dealing with the difficulty of proving damages for the rejection of such a lease, the Court said:

> The ways compensatory damages may be proven are many. The injured party is not to be barred from a fair recovery by impossible requirements. The wrongdoer should not be mulcted, neither should he be permitted to escape under cover of a demand for nonexistent certainty. Damages for breach of the lease were in contemplation of the parties when the contract was made. The lease contained a covenant of reentry without prejudice to right of action for arrears of rent or breach of covenants. The provision in the Bankruptcy Act gives a new right of recovery in bankruptcy only. This right of recovery is an unsecured claim of the character of a claim for a deficiency above the value of inadequate collateral. (*Id.* 560–561).
>
> Satisfactory evidence was presented for the three years of actual operation of the properties covered by this lease. We think that prior earnings of the same property over fourteen years was a fair base to use to project the estimate of the earnings for the eight years of future operation. The failure to produce further evidence, either through experts or transportation surveys, was not fatal to respondent's case, even though such evidence is admissible. We see no reason to disagree with the conclusion of the circuit court of appeals that under the evidence presented the damages for eight years might be predicted with a "fair degree of certainty." (*Id.* 561–562).

Singer & Sons v. *Union Pacific R. Co.*, 311 U. S. 295.

In this case the Supreme Court held that plaintiffs, commission merchants at Kansas City, Mo., were not "parties in interest" under section 1 (20) of the Interstate Commerce Act and therefore could not maintain a suit to prevent the Union Pacific from relocating its tracks to serve a new produce market at Kansas City, Kans., the suit being predicated upon the fact that the carrier had not secured from this

Commission a certificate of public convenience and necessity. In its opinion, the Court, speaking through Justice McReynolds, said:

The Transportation Act, 1920, was designed to protect the public against action which might endanger its interest. In order to aid that general purpose, Paragraph 20, section 402, provides that suit for an injunction may be instituted by the United States, the Commission (I. C. C.), any Commission or Regulative Body of the State or States affected, or any "party in interest." Such a suit cannot be instituted by an individual unless he "possesses something more than a common concern for obedience to law." The general or common interest finds protection in the permission to sue granted to public authorities. An individual may have some special and peculiar interest which may be directly and materially affected by alleged unlawful action. See *Detroit & M. Ry. Co.* v. *Boyne City, G. & A. R. Co.*, 286 F. 540. If such circumstances are shown he may sue; he is then "party in interest" within the meaning of the statute. In the absence of these circumstances he is not such a party.

We cannot think Congress supposed that the development and maintenance of an adequate railway system would be aided by permitting any person engaged in business within or adjacent to a public market to demand an injunction against a carrier seeking only to serve a competing market by means of an extension not authorized by the Interstate Commerce Commission.

The right to sue under the statute is individual. Petitioners are not helped by uniting. (*Id.* 303–304).

The conclusion of the Court was:

A mere extension to the plant of a competitor which in no other way affects the complaining parties in no proper sense brings about a material change in the transportation system directly affecting their peculiar interest which they have the right to prevent by suit. (*Id.* 304).

Palmer v. *Webster & Atlas National Bank*, 312 U. S. 156.

In this case the Supreme Court held that the trustees of the property of a bankrupt lessee railroad company (the New Haven), also operating properties of bankrupt lessor railroad companies (the Old Colony and the Boston & Providence), under section 77 (c) (6) of the Bankruptcy Act for account of lessor's estate after rejection of lease by the trustees of the New Haven, are not required by the Act of June 18, 1934, to advance funds from lessee's estate to pay taxes, or, under section 65 of the Judicial Code, to pay bond interest, owed by a terminal company, part of the burden of maintaining which has been allocated to lessor railroad by State statute. Such payments and the extent thereof were held to be problems of administration within the sound discretion of the Bankruptcy Court.

Armour & Co. v. *Alton R. Co.*, 312 U. S. 195.

This case presented the question whether a Federal district court had jurisdiction over an action by a packing company operating a plant adjacent to a public stockyard to recover from the railroads serving that stockyard amounts of yardage charges paid by a packer to the stockyard company as agent of the railroad on livestock shipped by the packer to itself. The Court's opinion concludes that this

complaint presented a complex transportation problem requiring preliminary resort to this Commission before a suit in court could be maintained.

Breisch v. *Central R. of New Jersey*, 312 U. S. 484.

This case involved an application of the Federal Safety Appliance Acts, the violation of which was due to respondent's failure to furnish efficient hand brakes for a car. No interstate commerce was involved. The Court held an employee injured in intrastate transportation by defective equipment of an interstate railroad comes under the Safety Appliance Acts. The Federal statute creates the right, but the remedy was within the control of a State. Consequently it sustained the right of the employee in this case to sue at common law.

Philadelphia-Detroit Lines, Inc. v. *Simpson*, 312 U. S. 655.

The Supreme Court in this case sustained the decision of the lower court (37 Fed. Supp. 314), which held constitutional a law of the State of West Virginia prohibiting use of double-decker trucks in transporting automobiles. No opinion was written by the Court, reference being made to its earlier decisions in *Maurer* v. *Hamilton*, 309 U. S. 598, and *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177.

United States v. *Resler*, 313 U. S. 57.

The Supreme Court in this case construed certain sections of part II of the Interstate Commerce Act and made two important holdings:

1. Section 213, relating to consolidations, et cetera, containing a provision that our authority is not required "where the total number of motor vehicles involved is not more than twenty," does not preclude us under section 212 (b) from making a requirement that transfers of certificates or permits shall be under such rules and regulations as we may prescribe, although less than 20 vehicles are involved; and (2) it is within our power, under this authority to make rules, to make our assent a condition precedent to an effective transfer under section 212 (b).

California v. *Thompson*, 313 U. S. 109.

This case involved facts which may be summarized as follows: Thompson was convicted of violating the California statute requiring a transportation agent or broker to obtain a license, after the State railroad commission had determined applicant's fitness, together with the payment of a $1.00 license fee and the filing of a bond in the sum of $1,000. It was shown that Thompson had arranged for the transportation of passengers by motor vehicle from Los Angeles, Calif., to Dallas, Tex., without first having obtained a license from the State. Only the single trip in question was involved. The service was not covered by part II of the Interstate Commerce Act, which exempts casual or occasional motor transportation of passengers. Section 203 (b) (9). In reversing the State court,

which held the statute infringed the commerce clause, the Supreme Court concluded that the regulation of the State did not in any respect unnecessarily obstruct interstate commerce; that Congress had not undertaken to regulate the acts for which respondent was convicted; that the commerce clause does not wholly withdraw from the States the power to regulate matters of local concern with respect to which Congress has not exercised its power, even though the regulation affects interstate commerce; and that (p. 114):

> where, as here, Congress has not entered the field, a State may pass inspection laws and regulations applicable to articles of interstate commerce designed to safeguard the inhabitants of the State from fraud, provided only that the regulation neither discriminates against nor substantially obstructs the commerce.

The decision of the Supreme Court in *DiSanto* v. *Pennsylvania*, 273 U. S. 34, was specifically overruled.

Arkansas Commission v. *Thompson*, 313 U. S. 132.

In this case the Supreme Court granted certiorari to review the affirmance of an order in a railroad-reorganization proceeding which overruled a motion by the Arkansas Corporation Commission for the dismissal of a petition filed by Thompson, in which he alleged that certain State taxes laid on the railroad were excessive and unlawful and sought to have their validity determined by the bankruptcy court. The Court called attention to the provisions of section 64 (a) (4) of the Bankruptcy Act giving priority to taxes legally due and owing by the bankrupt to any State, and providing that, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the bankruptcy court. Assuming, without deciding, that section 64 (a) of the Bankruptcy Act is applicable in railroad reorganization proceedings under section 77, the Court held that the bankruptcy court was not empowered to revise the valuation of a railroad which had been fixed by a State commission, in a quasijudicial proceeding, as the basis for a State tax, to which proceeding the trustee had been fully heard and from the result of which he took no appeal to the State courts as permitted by State law.

United States v. *Morgan*, 313 U. S. 409.

This case involved the validity of an order of the Secretary of Agriculture under the Packers and Stockyards Act relating to impounded funds in the registry of the district court between 1933 and 1937. In distinguishing between making rates for the future and rates for the past, the Court said:

> When the matter was last here we defined the duty of the Secretary. He was to determine reasonable rates for the impounding period so that there could be just distribution of the funds which the court below had taken into

its registry. The nature of the problem before the Secretary was a guide to its solution. The Secretary's task was not the usual enterprise of fixing rates for the future, so largely an exercise in prophecy. Unique circumstances made him, in 1939, the arbiter of rates for a period between 1933 and 1937. But even such a retrospective determination does not present a mathematical problem. Doubts and difficulties incapable of exact resolution confront judgment. More than that, since the Secreary is the guardian of the public interest in regulating a business of public concern it is not for him merely to reflect the items on a profit and loss statement. He must consider whether these represent services which properly should be charged to the public. While, therefor, the Secretary in determining rates for the past could not deny himself the benefit of hindsight, he was not merely a bookkeeper posting items into a ledger. Rates to which these public agencies were entitled were not to be derived merely from their expenditures and actual income. (*Id.* 414–415).

The claim that the Secretary's judgment was founded on the misconception that he must shut his mind to everything that happened after 1933, "and in 1939 fix rates in the imaginary world of 1933," was rejected.

Concerning the attack upon the order as unsupported by the evidence, the Court referred to the voluminous nature thereof and said to reexamine it "would in itself go a long way to convert a contest before the Secretary into one before the courts," and added:

We are in the legislative realm of fixing rates. This is a task of striking a balance and reaching a judgment on factors beset with doubts and difficulties, uncertainty and speculation. On ultimate analysis the real question is whether the Secretary or a court should make an appraisal of elements having delusive certainty. Congress has put the responsibility on the Secretary and the Constitution does not deny the assignment. (*Id.* 417).

The Court referred to the quite different considerations that may properly have influenced the Secretary in fixing rates for the impounding period from those by which he determined a schedule of rates for the future, and said:

It is not for us to try to penetrate the precise course of the Secretary's reasoning. Our duty is at an end when we find, as we do find, that the Secretary was responsibly conscious of conditions at the market during the years following 1933, that he duly weighed them, and nevertheless concluded that rates similar to those in the 1933 order were proper. (*Id.* 420).

In answer to the claim that the Secretary of Agriculture was biased, as shown by a letter he wrote to the New York Times following an earlier decision of the Court in this case, the Court referred to the practice familiar in the long history of Anglo-American litigation, "whereby unsuccessful litigants and lawyers give vent to their disappointment in tavern or press," and added:

Cabinet officers charged by Congress with adjudicatory functions are not assumed to be flabby creatures any more than judges are. Both may have an underlying philosophy in approaching a specific case. But both are assumed to be men of conscience and intellectual discipline, capable of judging a par-

ticular controversy fairly on the basis of its own circumstances. Nothing in this record disturbs such an assumption. (*Id.* 421).

Finally, the Court condemned the action of the district court in requiring the Secretary to appear before it and testify as to the facts considered by him in making the order, and in this connection said:

But the short of the business is that the Secretary should never have been subjected to this examination. The proceeding before the Secretary "has a quality resembling that of a judicial proceeding." *Morgan* v. *United States*, 298 U. S. 468, 480. Such an examination of a judge would be destructive of judicial responsibility. We have explicitly held in this very litigation that "it was not the function of the court to probe the mental processes of the Secretary." 304 U. S. 1, 18. Just as a judge cannot be subjected to such a scrutiny, compare *Fayerweather* v. *Ritch*, 195 U. S. 276, 306–07, so the integrity of the administrative process must be equally respected. See *Chicago, B. & Q. Ry. Co.* v. *Babcock*, 204 U. S. 585, 593. It will bear repeating that although the administrative process has had a different development and pursues somewhat different ways from those of courts, they are to be deemed collaborative instrumentalities of justice and the appropriate independence of each should be respected by the other. *United States* v. *Morgan*, 307 U. S. 183, 191. (*Id.* 422).

Gilbert v. *Peoria & Eastern Ry. Co.*

Ewen v. *Peoria & Eastern Ry. Co.*, 311 U. S. 700.

The Court in this case denied petitions for writs of certiorari to review the decision of the lower court (34 Fed. Supp. 332), sustaining, with one exception, our plan of reorganization of the Peoria & Eastern Railway Company, reported in 239 I. C. C. 303. The one exception wherein the Court modified our plan was to provide that income bondholders should have one director on the board who will "have the absolute right to scrutinize the road's operation, management, and finances."

Darnall Trucking Co. v. *Simpson*, 313 U. S. 549.

In this case the Court, without awaiting oral argument, and on authority of its prior decision in *Maurer* v. *Hamilton*, 309 U. S. 598, sustained a law of West Virginia prohibiting car-over-cab operations in that State.

United States v. *Northern Pacific Ry. Co.*, 311 U. S. 317.

In this case the Court reversed the judgment of the district court in a proceeding brought by the United States against the railway company, under the Act of June 25, 1929, to determine the respective rights of the parties under certain land grants. Withdrawals for Government reservations of so-called indemnity lands previously available to the railway for selection under the terms of the grants were declared invalid, and the judgment was remanded to the district court for ascertainment of the company's selection rights to agricultural lands. The selection rights were limited to land which was subject to pre-

emption or homesteading under the public land laws as of dates of withdrawals.

Beal v. *Missouri Pacific R. Co.*, 312 U. S. 45.

The Court decided in this case that a Federal district court was without jurisdiction to enjoin a State official from enforcing the penal provisions of a State full train crew law in the absence of a showing that a multiplicity of prosecutions was threatened and that irreparable injury would result. Violation of the statute being a disputed matter, the Court concluded that "the determination of questions of criminal liability under State law by Federal courts of equity can be justified only in most exceptional circumstances."

Railroad Commission of Texas v. *Pullman Co.*, 312 U. S. 496.

The action of a three-judge Federal district court in enjoining enforcement of an order of a State railroad commission which required sleeping cars operating in the State to be in charge of an employee of the rank of Pullman conductor was held by the Court to be erroneous on the ground that the lower court could not enter the injunction without determining the validity of the Commission's order under State law, a matter which has not been settled by the State courts.

Read v. *Dickerson*, 312 U. S. 656.

In this case, in a *per curiam* opinion, the Court reversed the judgment of a three-judge district court (33 Fed. Supp. 431) which held unconstitutional the State statute prohibiting transportation of stolen anthracite coal on the highways of the State, and remanded the case for appropriate findings as to whether the jurisdictional amount was involved.

Funks Grove Grain Co. v. *Alton R. Co.*, 313 U. S. 570.

In this case the Court denied petition for writ of certiorari to review a decision of the lower court (117 Fed. (2d) 210) involving the authority of the Illinois Commerce Commission under the State Public Utilities Act to order reparation of alleged excessive rates which are within the limitation of a schedule of reasonable rates previously prescribed by the State commission.

Consolidated Freightways v. *Railroad Commission of California*, 313 U. S. 561.

On April 7, 1941, the Court denied petition for writ of certiorari to review a decision of the Supreme Court of California holding that an operator of an interstate motor-carrier system transporting and delivering loads from pool cars to consignees within the city of San Francisco was subject to minimum rates established by the State commission.

Canterbury v. *Barnhart*, 313 U. S. 576.

On May 26, 1941, the Court denied petition for writ of of certiorari to review a decision of the circuit court of appeals (117 Fed. (2d)

604) involving an action to recover liquor and a truck confiscated by the State of Indiana while in transit through that State, where the losses in each action were less than $3,000, and plaintiffs had no permit to operate under part II of the Interstate Commerce Act. The seizures were made solely in connection with violations of State police traffic regulations, enforcement of which had not been taken from the States by the Federal act. By denying certiorari, the Court declined to disturb this ruling.

Whitney v. *Johnson*, 314 U. S. —.

On October 13, 1941, the Court, without awaiting oral argument, affirmed a decision of a lower court sustaining the Kentucky statute limiting weight of motortrucks on highways of that State to 18,000 pounds. The statute exempted passenger busses whose weight is limited by taxation based on seating capacity, and the lower court held the statute constitutional as applied to motortruck operators engaged in interstate commerce throughout the State of Kentucky. The Supreme Court, in affirming the decision, cited, among other cases, *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, and *Maurer v. Hamilton*, 309 U. S. 598.

Ryan v. *Pennsylvania Commission*, 314 U. S. —.

On October 13, 1941, the Court denied petition for writ of certiorari to review a decision of a State court (17 Atlantic (2d) 637), holding that the evidence was sufficient to support an order of the Pennsylvania commission directing Motor Transfer Company to cease and desist from transporting intrastate freight over through routes between points in Pennsylvania through Wheeling, W. Va., under certificate issued by the Interstate Commerce Commission, on the ground that the interstate transportation was a mere subterfuge to avoid the State commission's jurisdiction.

Pitcairn v. *Wild*, 314 U. S. —.

On October 13, 1941, the Court denied petition for writ of certiorari to review a decision of a lower court (149 S. W. (2d) 800), holding that the railroad's duty under the Safety Appliance Act to furnish efficient hand brakes is a mandatory duty, and a switchman need not prove negligence of railroad nor specific defect, but only failure of a hand brake to work efficiently when used in a customary manner.

Ewen v. *Peoria & Eastern Ry. Co.*, 314 U. S. —.

The Court on October 13, 1941, denied petition for writ of certiorari to review a decision of a lower court (37 Fed. Supp. 917), holding that a special court having jurisdiction of railroad adjustments under chapter 15 of the Bankruptcy Act has no jurisdiction to grant allowances to interveners in view of omission in chapter 15 of a provision like that in section dealing with railroad

reorganizations for allowances to parties in interest and their counsel.

Chicago & Eastern Illinois Ry. Co. v. *Gourley*, 314 U. S. —.

On October 13, 1941, the Court denied petition for certiorari to review a decision of a lower court (121 Fed. (2d) 785), holding that a State court's judgment entered against the debtor in an action for personal injuries sustained after railroad reorganization proceedings under section 77 of the Bankruptcy Act had been instituted, but before appointment of trustee who was not a party to the action, is entitled to recognition as proof of claim without hearing on the merits under section 77 (j). The lower court had also held that an order directing that claim be sent back to special master for hearing on its merits constituted an appealable order under section 24. By denying certiorari, the Court declined to review these rulings.

Pennsylvania R. Co. v. *Mistrot*, 314 U. S. —.

In a suit by a railroad in a State court to recover transportation charges from seller-consignor of goods shipped under bills of lading which did not contain signed stipulation requiring collection from consignee before delivery, where nominee of consignee made payment to railroad by checks which were subsequently dishonored, the court denied recovery, holding that consignor known by railroad not to be owner of the goods is only secondarily liable when consignee, as owner, accepts and receives shipments from carrier or directs delivery to another, and that liability of consignor is contingent upon carrier exhausting all means of collecting lawful charges from consignee's nominee or original consignee. By denying certiorari on October 13, 1941, the Court declined to disturb this ruling.

BUREAU OF LOCOMOTIVE INSPECTION

The work of this Bureau is shown in detail in the report of the director, published separately. Except as otherwise stated, the report here made is for the fiscal year ended June 30, 1941.

The following tables covering the fiscal years indicated are self-explanatory.

TABLE I.—*Reports and inspections—Steam locomotives*

	Year ended June 30—					
	1941	1940	1939	1938	1937	1936
Number of locomotives for which reports were filed	43,236	44,274	45,965	47,397	48,025	49,322
Number inspected	105,675	102,164	105,606	105,186	100,033	97,329
Number found defective	9,570	8,565	9,099	11,050	12,402	11,526
Percentage inspected found defective	9	8	9	11	12	12
Number ordered out of service	560	487	468	679	934	852
Number of defects found	37,691	32,677	33,490	42,214	49,746	47,453

TABLE II.—*Accidents and casualties caused by failure of some part of the steam locomotives, including boiler, or tender*

	Year ended June 30—					
	1941	1940	1939	1938	1937	1936
Number of accidents	153	164	152	208	263	209
Percent increase or decrease from previous year	6.7	[1] 7.9	26.9	20.9	[1] 25.8	[1] 4.0
Number of persons killed	15	18	15	7	25	16
Percent increase or decrease from previous year	16.7	[1] 20.0	[1] 114.3	72.0	[1] 52.2	44.8
Number of persons injured	182	225	164	216	283	215
Percent increase or decrease from previous year	19.1	[1] 37.2	24.1	23.7	[1] 31.6	19.5

[1] Increase.

TABLE III.—*Accidents and casualties caused by failure of some part or appurtenance of the steam locomotive boiler* [1]

	Year ended June 30—							
	1941	1940	1939	1938	1937	1936	1915	1912
Number of accidents	43	67	52	59	63	75	424	856
Number of persons killed	12	16	15	5	19	10	13	91
Number of persons injured	64	110	55	59	73	80	467	1,005

[1] The original act applied only to the locomotive boiler.

TABLE IV.—*Reports and inspections—Locomotives other than steam*

	Year ended June 30—					
	1941	1940	1939	1938	1937	1936
Number of locomotive units for which reports were filed	3,389	2,987	2,716	2,555	2,416	2,361
Number inspected	5,558	4,974	4,581	4,024	3,615	3,118
Number found defective	319	298	260	274	328	252
Percentage inspected found defective	6	6	6	7	9	8
Number ordered out of service	21	16	14	9	24	11
Total number of defects found	905	766	696	769	991	674

TABLE V.—*Accidents and casualties caused by failure of some part or appurtenance of locomotives other than steam*

	Year ended June 30—				
	1941	1940	1939	1938	1937
Number of accidents	11	7	5	4	12
Number of persons killed					
Number of persons injured	11	7	5	4	14

INVESTIGATION OF ACCIDENTS AND GENERAL CONDITION OF LOCOMOTIVES

All accidents reported to the Bureau as required by the law and rules were carefully investigated, and appropriate action was taken to prevent recurrence as far as possible. Copies of reports of accident investigations were furnished to interested parties when re-

quested and otherwise used to bring about a diminution in the number of such accidents.

STEAM LOCOMOTIVES

One hundred and fifty-three accidents occurred in connection with steam locomotives, resulting in 15 deaths and 182 injuries. This represents a decrease of 11 accidents, a decrease of 3 in the number of persons killed, and a decrease of 43 in the number of persons injured compared with the preceding year.

During the year, 9 percent of the steam locomotives inspected by our inspectors were found with defects or errors in inspection that should have been corrected before the locomotives were put into use; this represents an increase of 1 percent compared with the results obtained in the preceding year. There was an increase of 15 percent in the number of locomotives ordered withheld from service by our inspectors because of the presence of defects that rendered the locomotives immediately unsafe.

EXPLOSIONS AND OTHER BOILER ACCIDENTS

All of the 11 explosions that occurred in the fiscal year, in which 11 persons were killed and 29 injured, were caused by overheating of the crown sheets due to low water. There was a reduction of 1 in the number of persons killed and an increase of 14 in the number of persons injured from this cause as compared with the preceding year.

Four of the explosions were particularly violent. One of these accidents occurred while the locomotive was hauling a passenger train at an estimated speed of 50 to 55 miles per hour. Two employees were killed, and one employee and five Pullman employees were injured. The force of the explosion tore the boiler from the running gear and hurled it forward 330 feet, where it struck the track, rebounded, and again struck the track and came to rest on its right side, in reverse position, near the east side of the track. The running gear, tender, and first four cars were derailed where the boiler first struck, and the track was torn up from this point for a distance of 350 feet. Parts of the wreckage were scattered in various directions up to 725 feet from the point of explosion.

As above indicated, three of the other explosions were of like violence. The remaining seven, in which two employees were killed and nine injured, were of less severity.

Boiler and appurtenance accidents other than explosions resulted in the death of 1 person and injuries to 35 persons; this is a reduction of 3 deaths and 60 injuries as compared with the preceding year.

BOILER-FEEDING AND WATER-LEVEL INDICATING DEVICES

Our investigations of two of the explosions revealed serious neglect in not maintaining the boiler-feeding devices in condition to perform their intended function. Repeated reports of impairment of capacity of these devices had been made over considerable periods of time prior to the explosions. All of these reports were signed and purported to show that work had been done on the parts reported, but later reports showed that the defective conditions continued until the explosions occurred. Repeated reports indicating the same defective condition should be sufficient warning that proper repairs had not been made. These accidents demonstrate the necessity of making inspections and tests after reports of defective conditions and after repairs have been attempted that will show definitely whether or not the purpose of the repairs has been accomplished.

Serious neglect is also evident in some instances in the matter of maintaining water-level indicating devices in good condition, which includes thorough cleaning of gage cocks, water-glass cocks, and water-column connections each time the boilers are washed, or more frequently if needed to prevent stoppages or partial stoppages of the water and steam passages; making inspections and repairs sufficiently often and thorough to insure that these devices operate and indicate as intended; and attention to the condition and proper placement of water-glass lamps.

EXTENSION OF TIME FOR REMOVAL OF FLUES

One thousand one hundred and eighty-two applications were filed for extensions of time for removal of flues, as provided in rule 10. Our investigations disclosed that in 98 of these cases the condition of the locomotives was such that extensions could not properly be granted. Nineteen were in such condition that the full extensions requested could not be authorized, but extensions for shorter periods of time were allowed. Seventy-two extensions were granted after defects disclosed by our investigations were required to be repaired. Twenty-nine applications were canceled for various reasons. Nine hundred and sixty-four applications were granted for the full periods requested.

LOCOMOTIVES PROPELLED BY POWER OTHER THAN STEAM

There was an increase of four in the number of accidents occurring in connection with locomotives other than steam and an increase of four in the number of persons injured as compared with the preceding year. No deaths occurred in either year.

During the year, 6 percent of the locomotives inspected by our inspectors were found with defects or errors in inspection that should

have been corrected before the locomotives were put into use, this percentage being the same as in the preceding year. There was an increase of five in the number of locomotives ordered withheld from service by our inspectors because of the presence of defects that rendered the locomotives immediately unsafe.

SPECIFICATION CARDS AND ALTERATION REPORTS

Under rule 54 of the Rules and Instructions for Inspection and Testing of Steam Locomotives, 225 specification cards and 6,786 alteration reports were filed, checked, and analyzed. These reports are necessary in order to determine whether or not the boilers represented were so constructed or repaired as to render safe and proper service and whether the stresses were within the allowed limits. Corrective measures were taken with respect to numerous discrepancies found.

Under rules 328 and 329 of the Rules and Instructions for Inspection and Testing of Locomotives Other Than Steam, 447 specifications and 39 alteration reports were filed for locomotive units, and 100 specifications and 91 alteration reports were filed for boilers mounted on locomotives other than steam. These were checked and analyzed; and corrective measures taken with respect to discrepancies found.

APPEALS

No formal appeal by any carrier was taken from the decisions of any inspector during the year.

LOCOMOTIVES AND ACCIDENT PREVENTION

The purpose of the Locomotive Inspection Act is to promote the safety of employees and travelers upon railroads; the act makes it unlawful for any railroad to use or permit use on its line of any locomotive unless said locomotive and all parts and appurtenances thereof are in proper condition and safe to operate without unnecessary peril to life or limb and provides for a general safety standard through the promulgation of rules and instructions for inspection and testing. It has been found that these rules and instructions reduce the hazards of locomotive operation in practically direct proportion to the degree of compliance.

The original act became effective July 1, 1911, and to and including 1915 it applied only to boilers and their appurtenances; during that period there was a steady and substantial improvement in the condition of these parts. An amendment, effective early in the fiscal year ended June 30, 1916, extended the provisions of the act to include the entire locomotive, and thereafter the scope of the work of the Bureau was very considerably broadened. About this time the volume of traffic increased, with a resultant tendency on the part

of the railroads to neglect inspections and short-cut repairs, which in turn caused an increase in the number of defective locomotives and a corresponding increase in the number of accidents and casualties. The percentage of locomotives inspected by our inspectors which were found defective in the year ended June 30, 1917, was 54.5, and thereafter, until after the fiscal year ended June 30, 1923, in which 65 percent of the locomotives inspected by our inspectors were found defective, it was not possible to effect improvement due to absence of sufficient appropriations to further the work of the Bureau.

Vast strides have been made in improving the general condition of locomotives since 1924 due to increased funds available to the Bureau and a realization on the part of the railroads that more effective use can be made of locomotives maintained in condition to comply with the established rules and instructions. The percentage of locomotives found defective in the fiscal year ended June 30, 1940, reached a low of 8 percent, and this percentage increased to 9 percent in the fiscal year ended June 30, 1941. This represents a 1-percent recession in the condition in the fiscal year ended June 30, 1941, as compared with the preceding year. There was a material increase in the total number of defects found and reported by our inspectors as compared with the preceding year, and there was an increase of 15 percent in the number of steam locomotives ordered withheld from service because of the presence of defects that rendered the locomotives unsafe. Under ordinary conditions these results need not necessarily be particularly alarming, since some variations can be expected from year to year. However, under present circumstances special significance is necessarily attached thereto because of the shortage of material and skilled labor. All possible measures should be taken to increase the thoroughness of inspections and to apply timely and substantial repairs to all parts upon which there is any doubt as to safety and dependable performance.

The practice, still too often indulged in, of applying temporary repairs in the hope that the locomotive will make a successful trip and that more adequate repairs may be applied thereafter when the time is most convenient, has been productive of many failures on the line of road. These failures, in addition to increasing the peril to life and limb of employees and others and increasing the ultimate cost of repairs, result in delay to the train involved and frequently affect the orderly movement of other trains. Avoidance of failures of locomotives on the line of road is an essential component of satisfactory railroad performance, and it is therefore essential that the practice of applying temporary repairs of the character indicated be reduced to the absolute minimum.

Before a locomotive is started on any trip it should be known that all parts and appurtenances are in safe and suitable condition for service, rather than assumed, as is sometimes done, that if the locomotive arrived under its own power it can go out again. All parts to which repairs have been made, the condition or capacity of which may not be determinable by visual inspection, such as air compressors, injectors, and feed water pumps, should be appropriately tested for the output required under service conditions in addition to the usual examinations made when a locomotive is being prepared for service, since mere observation that these parts "work" when a locomotive is at the terminal is not sufficient to determine whether or not their capacity has been restored. In investigations of accidents we sometimes find reports on the defect that caused the accident repeated many times until failure eventually occurred, together with signatures on the reports indicating that the reported work had been done, or at least that repairs to the reported defects had been attempted each time a report was made. This is proof that the safe repairs required to secure dependable operation of the locomotive had not been made and that labor and time had been wasted.

Complexity of the various appurtenances installed on modern locomotives, coupled with the placing in service of a large number of older locomotives which have been out of service for periods ranging up to 10 years or more, many of which are practically obsolete and therefore not well adapted to the giving of satisfactory performance under present conditions, and the intensive use of all locomotives now in service, necessitate increased vigilance on the part of all concerned to effectuate the purpose of the act and to comply with the proclamation of the President dated August 18, 1941. This proclamation calls upon the National Safety Council to mobilize its nation-wide resources in leading a concerted and intensified campaign against accidents, and also calls upon every citizen, in public or private capacity, to enlist in this campaign and do his part in preventing wastage of the human and material resources of the nation through accidents.

Continuous improvements have been made in the design and construction of locomotives since the inception of the use of steam power on railroads, and improvements will continue, in some measure, in new production during the emergency. All of the outstanding improvements in locomotive design and construction, as in practically all other mechanisms, have been brought about by the process of evolution rather than revolution. All have gone through periods of trial and adjustment, and many have been materially changed from the original conception before satisfactory performance could be obtained.

It therefore cannot be expected that major changes in design, construction methods, or practices will produce any appreciable beneficial

effect in time to ease the current and prospective general situation. On the contrary, attempts to produce such changes, due to the accompanying necessary variations in established practices of the builders and the railroads, the necessity for close observation and supervision over the trial periods, and the changes in or the transfer of skill that may be required of the builders' employees and the railroads' maintenance forces, would delay production of locomotives, absorb manpower that could well be used for immediate and more important purposes, and result in delays to repairs because of interruptions in the established orderly work of the maintenance forces. In the absence of certainty that the merits of any major changes in design and methods of construction that may be proposed would warrant immediate and widespread adoption irrespective of the effects on production and the skilled-labor situation, efforts to build and use locomotives involving designs and constructions that have not fully justified themselves through general use should, for the common good, be held in abeyance until the cessation of the emergency.

BUREAU OF MOTOR CARRIERS

GENERAL PROGRESS OF ADMINISTRATION

The past year has been one of general advancement in the long-term objectives of motor-carrier regulation, despite increased pressure of work and changing conditions as motor carriers responded to the needs of the national-defense program. Enforcenment work has been expanded, highway safety promoted, and further progress made in stabilizing rates, although our first order of business has been the expedition of matters related to defense. Particularly well suited to the emergency has been the power to grant temporary authority under section 210a. Procedure has been so speeded that, where a definite need exists, it is possible to grant extended or new temporary authority almost immediately upon the filing of an application with our field staff. More than 1,000 applications for temporary authority were handled during the year.

There has been a substantial increase in the number of court cases instituted by us in our efforts to bring about a more general observance of the act and our regulations thereunder by both carriers and shippers. A great majority of these cases have resulted in pleas of guilty or conviction. We are not yet satisfied with the enforcement situation, however, and our plans for the coming year contemplate still greater activity in this field.

We have mentioned in past reports our decisions in a number of important rate cases. Another such case, Ex Parte No. MC–23, was decided during the year, in which we prescribed minimum rates for common carriers in a portion of western trunk-line territory. Nu-

merous supplemental reports have been issued in the cases previously decided. Among other important decisions in rate proceedings was that in No. MC–C–98, *Dairy Products in the Northwest*, 28 M. C. C. 267, wherein we required a rather comprehensive readjustment of rates on dairy products, and that in No. MC–C–165, *New England M. Rate Bureau, Inc.*, v. *Lewers and McCauley*, 30 M. C. C. 651, in which a contract carrier's minimum rates were found unreasonable, and the determination was made that in prescribing such minimum rates for the future we shall give controlling weight to the contract carrier's operating expense and not to the rates of competing common carriers.

Our regulations to promote the safety of operation of private carriers engaged in the transportation of property in interstate or foreign commerce have been in effect since October 15, 1940. Progress in this field has been limited principally to education of the parties affected and adaptation of our general requirements to the varied operating practices of these carriers. We have compiled a list of nearly 10,000 private carriers, each of which has been or will be served with a copy of our regulations. Additional names are coming to our attention daily. We are pleased with the present extent of voluntary compliance, but we realize that maximum safety results can be attained only by active enforcement. This will be undertaken as soon as sufficient personnel is available.

Further progress has been made in bringing about general compliance with our safety regulations by common and contract carriers. Safe operating practices are steadily becoming matters of first moment among these carriers. Enforcement is proceeding satisfactorily. We acknowledge again, as we have before, the continued cooperation of the representatives of the State governments in this task, and note with satisfaction the widespread adoption by the States of safety requirements uniform with ours.

IMPORTANT DECISIONS

A number of questions involving the construction and interpretation of part II, especially provisions added by the Transportation Act of 1940, have been determined during the year.

In *Bleich Common Carrier Application*, 27 M. C. C. 9, we affirmed the finding in the prior report, 14 M. C. C. 662, that pick-up and delivery service by motor carriers for freight-forwarding companies is service of a common carrier and is under a common arrangement for continuous carriage or shipment within the meaning of section 203 (b) (8) and therefore not within the partial exemption of that section. We also held that section 202 (c) (2), added by the Transportation Act of 1940, does not apply to such service.

In *Copes Broker Application*, 27 M. C. C. 153, we found that brokers may lawfully collect compensation from carriers whose transportation or service they arrange for or sell; that brokerage of transportation to be performed by contract carriers is not unlawful, if confined within described limits; and that brokerage of transportation to be performed by carriers exempt under section 203 (b) (6) from the certificate or permit requirements of part II is not subject to that part.

In *Enterprise Trucking Corp. Contract Carrier Application*, 27 M. C. C. 264, applicant, a wholly owned subsidiary of two manufacturers, was organized to transport the products of such manufacturers in motor vehicles which they jointly owned. No transportation charges were assessed by applicant, the cost of the transportation service being included in the selling price of the manufacturers' products. Division 5 held that operation by applicant under this arrangement was that of a contract carrier as defined in section 203 (a) (15).

In *Lubbock-El Paso Motor Frt., Inc., Com. Car. Application*, 27 M. C. C. 585, division 5 held that motor common carriers may interchange shipments with any and all connecting common carriers at all points they are authorized to serve, but not at any other point on the route, and that such right is not limited to the particular carriers with which interchange arrangements were in effect on or prior to the effective date of part II.

Stangler Contract Carrier Application, 27 M. C. C. 463, presented the question of whether transportation of property between points in California for further shipment to Hawaii was transportation in interstate or foreign commerce subject to part II. Division 5 held that such transportation is not subject to that part, as Hawaii is neither a State nor a foreign country as those terms are used in the definition of interstate and foreign commerce in section 203 (a) (10) and (11).

In a prior report in *Kansas City S. Transport Co., Inc., Com. Car. Application*, 10 M. C. C. 221, a motor subsidiary of the Kansas City Southern Railway Company was authorized to transport general commodities between stations on the lines of the railroad, subject to five conditions designed to confine such operations to those auxiliary to, or supplemental of, the rail service. One of those conditions limited applicant to transportation of shipments which it received from or delivered to one of the rail carriers under a through bill of lading covering a prior or subsequent movement by rail. On oral argument and reconsideration, 28 M. C. C. 5, we found that this condition should be modified to permit substitution of motor service for way-freight train service regardless of whether there was a prior or subsequent movement by rail, as such substitution would result in

substantial economy and efficiency of operation. A restriction was imposed which prohibited applicant from rendering motor-carrier service between key points on the rail lines served by through freight trains.

In *Scrip Books, Exchange of Coupons*, 28 M. C. C. 363, division 2 found that the rules, regulations, and charges applicable to the sale and use of interchangeable scrip coupon tickets were unreasonable, unjustly discriminatory, and unjustly prejudicial. The schedules provided for the sale of the scrip books at a price less than the face value of the tickets therein. The schedules were ordered canceled and the carriers were required to discontinue the issuance and sale of such scrip books and certificates at less than published standard fares.

In *Regulations, Special or Chartered Party Service*, 29 M. C. C. 25, division 5 prescribed rules and regulations governing special or chartered party service authorized under section 208 (c) to be rendered by common carriers as an incident to the right to engage in transportation of passengers over regular routes and between fixed termini.

In *Baggett Transp. Co. Common Carrier Application*, 29 M. C. C. 103, applicant conducted contract-carrier operations in several States and common-carrier operations in intrastate commerce solely within the State of Alabama. It sought to engage in interstate operations over its Alabama route by registering its Alabama certificate with us under the second proviso of section 206 (a), its contention being that so long as its common-carrier operations were confined to a single State and were authorized by an appropriate State certificate, it was entitled to engage in interstate operation over its authorized routes irrespective of the fact that its contract-carrier operations were not confined to that State. Division 5 held that applicant could not conduct interstate operations over its routes within Alabama without obtaining a certificate from this Commission.

In *Dixie Ohio Exp. Co. Extension—Bristol*, 30 M. C. C. 291, on reconsideration we authorized applicant to operate over an alternate route between Akron, Ohio, and Atlanta, Ga., which would avoid passing through the State of Kentucky. That State had in effect certain weight and length restrictions which made it necessary for applicant, upon reaching Kentucky, to transfer all shipments to equipment of such weight and length as could be operated lawfully in that State. Operation through Kentucky, when no shipments originated or were to be delivered there, resulted in delays and increased cost to the carrier and in turn to the public. It was our opinion that public convenience and necessity required carrier operations to be conducted in such manner as would result in operating economies and contribute to expedition, safety, and efficiency in operation.

In *Palisano Common Carrier Application*, 30 M. C. C. 591, division 5 found that collection, transfer, or delivery service performed by a motor carrier for other motor carriers under joint rates or under combination of separately established rates and for rail carriers falls within the exemption contained in section 202 (c) (2) and therefore is not subject to regulation under part II. It was also held that collection and delivery service for freight-forwarding companies is not covered by the language of that section, and that it would be necessary to obtain a certificate authorizing such operation.

In *Slocum Exemption Application*, 30 M. C. C. 169, we held that a motor carrier lawfully engaged in intrastate commerce within a single State but not currently engaged in interstate or foreign commerce within such State was a "motor carrier," as that term is used in section 204 (a) (4a), and therefore entitled to apply to us for a certificate of exemption under that section.

In *Yellow Truck Lines, Inc.—Purchase—F & H Truck Lines*, 35 M. C. C. 773, the argument that purchase of operating rights only does not constitute purchase of "properties" of a carrier within the meaning of section 5 (2) (a) was rejected by division 4, it being found that authority to unify solely physical properties would have little meaning unless operations formerly conducted separately by the participating carriers could be conducted pursuant to the unification.

In *Wilson Storage & Transfer Co.—Purchase—Dakota Transp.*, 36 M. C. C. 221, division 4 condemned as contrary to the public interest and found unlawful under section 5 the acquisition of intrastate rights and operations in advance of our approval of the transaction covering such acquisition along with other properties and operations of the vendors in interstate or foreign commerce, on the ground that the contracts covering purchase of the interstate and intrastate rights embraced a single transaction which required our prior approval under section 5.

In *Carolina Freight Carriers Corp.—Purchase—Edmunds*, 36 M. C. C. 259, division 4 found that upon unification of the irregular-route operations of the two carriers, the through service proposed to be rendered under the combined operating rights would be permissible, provided a point authorized to be served by both carriers under separate ownership were used as a gateway for such through movement.

In *Rock Island M. Transit Co.—Purchase—C., R. I. & P. Ry. Co.*, 36 M. C. C. 573, division 4 found that unexercised permissive authority to operate as a motor carrier does not constitute "property" within the meaning of that word as used in section 5, and that the proposed transaction to purchase such permissive authority was not one within the scope of section 5 (2) (a).

In *Baggett Transp. Co.—Purchase—Bishop*, 36 M. C. C. 659, applicant, which operated as a motor carrier in several States, sought authority to purchase the claimed operating rights of a person operating wholly within one State under the exemption of the second proviso of section 206 (a). In dismissing the application, we held that we had no authority to pass upon the propriety of the transaction under section 5, and the surviving motor carrier must apply to us in a proper proceeding under section 207 (a) and obtain from us a certificate of public convenience and necessity covering the portion of the operation previously conducted by virtue of the exception, for the reason that the exemption would cease to apply when, after the purchase, the purchaser would not be operating wholly within a single State.

In *Marion Trucking Co., Inc.—Purchase—Martz*, 37 M. C. C. 305, applicant, operating as a contract carrier, sought to purchase the operations of another contract carrier. Division 4 authorized such purchase, but stated that the unification of the two operating rights would not result in applicant's being authorized to connect its operations with those acquired for the performance of through service greater in scope than had been possible under separate ownership.

SECTION OF ACCOUNTS

This section is engaged principally in administering, and securing compliance with, our accounting regulations and our reporting requirements, including the formulating of accounting systems and preparation of report forms. At present these regulations are in effect only for class I motor carriers, which are defined as those having average gross operating revenues (including interstate and intrastate) of $100,000 or more annually from motor-carrier operations. On October 31, 1941, there were 1,301 class I motor carriers of property and 205 class I motor carriers of passengers, as compared with 1,202 such carriers of property and 203 such carriers of passengers on the same date last year. Class I motor carriers are required to submit periodic reports which are given an exhaustive office examination, supplemented by an examination of each carrier's books and records by our field accountants. These field examinations afford an opportunity for checking compliance with our accounting and report requirements, as well as instructing carriers in the proper accounting procedure.

During the year, this section completed the office examination of 1,322 annual reports for 1940, and field accountants have examined carrier's records in 1,146 of these. In addition, the handling of 279 annual reports remaining from 1939 was completed.

The following shows the number of monthly and quarterly reports received and examined for errors in preparation or accounting practices during the year:

	Received	Examined
Monthly reports, passenger	2,345	2,350
Quarterly reports, passenger	808	741
Quarterly reports, property	4,862	4,457

The section handled 371 accounting cases in connection with mergers, consolidations and acquisitions of control under section 5, and 1,777 financial and income statements filed with applications for transfer of rights under section 212. In addition, financial and operating statements filed with applications to self-insure were analyzed, and in some instances reports were prepared for our consideration in determining qualifications of the applicants.

Investigations of carriers' books of accounts and records were made and reports were submitted in connection with rate, finance, and enforcement matters.

As reported last year, we requested class II and class III carriers to submit certain data relating to their operations for the year 1939. A compilation of these data and corresponding data taken from reports of class I carriers was made for our use. Similar information for 1940 was submitted by class II and class III carriers and is now being tabulated. The returns for 1940 include information relating to wages and hours of motor-carrier employees, which information was obtained for the Wage and Hour Division of the Department of Labor.

As previously reported, proposed uniform systems of accounts for class II and class III carriers are under consideration but have not been prescribed. While there has been an increasing interest in uniform accounting regulations by these carriers and their adoption is desirable in the administration of part II, our present accounting staff is insufficient to undertake the educational work necessary to obtain effective compliance.

SECTION OF CERTIFICATES

As our annual report for 1937 described in detail the duties of the Section of Certificates, this report will be confined to a summary of the status of the various applications handled by the section.

Applications for certificates, permits, licenses, registration, and exemption filed since enactment of part II of the Interstate Commerce Act

	Cumulative to Oct. 31, 1940	Nov. 1, 1940, to Oct. 31, 1941	Cumulative to Oct. 31, 1941
"Grandfather" applications filed on and prior to Feb. 12, 1936	82,477	[1] 544	83,021
"Grandfather" applications filed after Feb. 12, 1936	6,448	153	6,601
Applications for authority to institute new operations	13,141	3,399	16,540
Applications to register State certificates filed after Feb. 12, 1936	1,375	533	1,908
Applications for temporary authority under section 210a (a)	1,244	1,203	2,447
Applications for exemption of one-State operations under section 204 (a) (4a)		37	37
Total applications received	104,685	5,869	110,554
Applications approved	26,891	1,619	28,510
Applications denied, dismissed, or withdrawn	66,931	5,551	72,905
Applications pending	10,863	−1,742	[2] 9,139
Total	104,685	5,869	110,554

[1] The increase in the number of "grandfather" filings results from the transfer of portions of operating right or the separation of applications involving more than one type of operation.

[2] Of the 9,139 applications pending, 4,101 are filed under the "grandfather" clauses of the act, sections 206 (a) and 209 (a), by motor carriers who claim to have been in bona fide operation on June 1, 1935, as common carriers, or on July 1, 1935, as contract carriers. The carriers filing such applications are authorized by the act to continue operations pending determination of their applications.

Identification plates.—During the year, 50,561 identification plates were issued, bringing the total plates issued as of October 31, 1941, to 330,992. A total of $83,748 has been transmitted to the Treasury of the United States in payment therefor. Plates surrendered after cancelation or transfer of operating authorities, or reported lost or destroyed, total 65,040, leaving outstanding 265,952 valid identification plates in the hands of 22,653 carriers.

Applications for Transfer of Operating Rights.—There were submitted during the year 1,767 notifications of transfer of State operating rights, and applications for substitution, transfer, or lease under section 212, of which 1,575 have been granted and 154 dismissed or denied. To date a total of 9,936 such notifications and applications have been submitted, of which 8,820 have been granted and 920 dismissed or denied. One hundred ninety-six are now under consideration.

Temporary Authority Under Section 210a (a).—Of the 1,203 applications filed for emergency authority under section 210a (a) during the past year, 758 were granted upon a showing that there was an immediate and urgent need for such service and that there was no carrier within the territory capable of meeting such need. Three hundred sixty-two did not disclose such facts and were denied. To date a total of 2,447 applications have been filed, of which 1,279 have been granted, 1,023 denied, and 145 are under consideration or awaiting compliance by applicants with our requirements for filing rate publications and security for protection of the public. There has been a substantial increase in these applications due primarily to defense activities.

SECTION OF COMPLAINTS

The following indicates the condition of the docket of formal complaints, general investigations, and investigation and suspension proceedings for the year ending October 31, 1941 (corresponding figures for the preceding year are also given):

	1940	1941		1940	1941
Formal complaints filed	30	36	Proceedings disposed of, including subnumbers, reopened cases, and cases instituted in the preceding year	416	593
Subnumbers	1	26			
Investigations instituted	40	58			
Investigation and suspension cases instituted	446	540	Reopened	9	18
Hearings	246	436	Number of cases pending	368	453
Proceedings under submission at end of period	153	99			

During the last year, the formal complaints filed and the investigation and suspension proceedings instituted numbered 62 and 540 respectively. We decided 7 complaint and answer cases and 91 investigation and suspension proceedings, including in each instance cases left from the preceding year. Twenty-eight complaint and answer and 426 investigation and suspension cases were dismissed at the request of the parties.

In addition, 58 investigations were instituted by us either upon complaint or upon our own motion, and we decided 20 and dismissed 17 of such cases, including some which had been instituted in the prior year.

On November 1, 1940, petitions were pending which contained 711 proposals for the modification of the orders prescribing minimum reasonable rates in middle Atlantic, central, and New England territories. Where the issues permitted, action was taken on these proposals without hearing; but hearings were necessary in many instances. During the year, 547 proposals were heard, 108 were withdrawn by the petitioners, and 1,919 were disposed of in 42 supplemental reports. On October 31, 1941, 1,102 of such proposals were in the course of administrative handling for later action by us.

The following indicates the condition of the docket of application matters for the year ending October 31, 1941. Corresponding figures for the year ending October 31, 1940, are also given:

	1940	1941
Hearing procedure docket		
Hearings	3,578	3,505
Recommended orders and reports by joint boards or examiners	3,770	3,334
Applications decided by effective recommended orders	2,546	2,224
Applications decided by the Commission	1,502	1,787
Application matters reopened after decision	465	380
Applications in section pending hearing or rehearing	1,818	1,602
Application matters heard but pending in various stages short of submission	1,107	868
Applications heard and submitted to the Commission for final determination but not decided	1,932	1,640

	1940	1941
No-hearing procedure docket		
Recommended orders and reports by joint boards or examiners	607	593
Applications decided by effective recommended orders	505	501
Applications decided by the Commission	38	22
Application matters reopened after decision	23	51
Application matters in section for preparation of recommended orders and reports by joint boards or examiners	51	31
Application matters in which recommended orders and reports have been issued but in various stages short of submission	137	158
Application matters submitted to the Commission for determination but not yet decided		6

During the year 1,561 proceedings were submitted to us for final determination as compared with 1,667 during the preceding year. Eleven hundred nineteen petitions were handled in application matters formally heard.

In connection with formal proceedings, the section received and prepared answers on approximately 10,000 letters from applicants, practitioners, interested parties, and our field staff. In addition, between 8,000 and 10,000 procedural orders were drafted. Since our last report, the handling of informal complaints has been transferred from this section to other sections of the Bureau.

SECTION OF FINANCE

This section is responsible for the work relating to regulation of consolidations, mergers, purchases, leases, contracts to operate, and acquisitions of control of motor carriers under section 5; issuance of securities and assumption of obligation or liability by such carriers under section 214, and corporate reorganizations of motor carriers under the Bankruptcy Act. A summary of the status of this work follows:

	Filed			Pending on Oct. 31, 1941
	Cumulative to Oct. 31, 1940	Nov. 1, 1940, to Oct. 31, 1941	Cumulative to Oct. 31, 1941	
Formal cases:				
Initial disposition:				
Applications under section 5 (and former section 213) for approval of unifications	1,241	283	1,524	182
Applications under section 214 for authority to issue securities or assume obligation or liability	150	25	175	10
Reopened	23	3	26	2
Temporary authority: Petitions under section 210a (b) seeking temporary authority in unification proceedings	284	130	414	7
Petitions—general	452	129	581	25
Total	2,150	570	2,720	226

During the year a total of 622 matters of the types referred to above were disposed of, representing an increase of 157 over the annual average for the preceding 4 years.

The number of motor carriers undergoing corporate reorganization under the Bankruptcy Act seems to be increasing, and we have given consideration to an aggregate of 30 such matters. In connection with this phase of the work, excellent cooperation has been received from the Securities and Exchange Commission.

Generally speaking, transactions covered by applications for authority to unify are becoming increasingly complicated, and the part which the motor-carrier industry is taking in the national-defense program emphasizes the necessity for prompt disposition of these cases. The amendments to the act effective September 18, 1940, specify certain new matters which we are required to consider in unification proceedings. These have added materially to the work of handling these cases and have tended to result in lengthening the records made in proceedings in connection therewith. With respect to cases which appear susceptible of handling without a formal hearing, an abbreviated procedure has recently been made effective. Although sufficient time has not elapsed to permit of gaging accurately the effect of this new procedure, it is anticipated that disposition of applications in the category mentioned will be materially expedited.

SECTION OF INSURANCE

In previous annual reports we have described the scope of our rules and regulations under sections 211 (c) and 215 relating to security for the protection of the public. At this time surety bonds, certificates of insurance, or qualifications as self-insurers are on file for some 27,000 motor carriers covering automobile bodily-injury and property-damage liability. In addition, some 20,520 motor common carriers have filed one of the afore-mentioned types of security covering their cargo liability to shippers and consignees. Approval of authority to self-insure has been granted to 23 motor carriers. As this approval has the effect of exempting the motor carrier from filing security, it has been necessary for us to require self-insurers to establish a substantial degree of financial responsibility. Surety bonds have been filed in 1,635 cases covering one or more of the classes of liability for which motor carriers and brokers are required to file security.

In connection with the filing of one or more of the forms of insurance by motor carriers, this section has handled during the past year 69,657 certificates of insurance, 16,377 notices of cancelation, and 3,641 rescinders of notices of cancelation and reinstatements of canceled insurance.

A great amount of correspondence was had with carriers and insurance companies to the end that full, complete, and continuous compliance be maintained. Numerous answers were made to inquiries from the public concerning liability coverage in matters of personal injury or death or loss of or damage to property.

SECTION OF LAW AND ENFORCEMENT

The status of complaints and litigation during the year is as follows:

Number of complaints on hand Nov. 1, 1940	3,370
Number of complaints received during period	2,498
Number of complaints requiring attention during period	5,868
Average filed per month	208
Number of complaints closed	2,728
Average closed per month	227
Number of complaints pending	3,126
Number of violations by type:	
Operating without authority	1,830
Nonobservance of rates and charges on file	729
Unification without authority	29
Nonobservance of safety regulations	223
Insurance requirements	219
Accounting requirements	9
Miscellaneous	271
Total (including complaints charging more than one violation)	3,310
Investigations concluded and reviewed (including cases received prior to Nov. 1, 1940, but handled during the current year)	2,728
Under investigation by special agents or field staff, or awaiting investigation or other disposition	3,126
Total	5,854
Cases involving litigation, on hand at beginning of current year:	
Civil	25
Criminal	98
Total	123
Recommended for litigation:	
Civil	68
Criminal	645
Total	713
Court cases instituted:	
Civil	56
Criminal	580
Total	636

Court cases concluded:	
Civil	44
Criminal	535
Total	579
Cases awaiting institution:	
Civil	26
Criminal	167
Total	193

The foregoing table discloses that during the year 579 court proceedings which had been instituted by us or upon our recommendation were brought to a conclusion. Of this total, 535 involved criminal violations of the statute. Penalties totaling $367,098.82 were imposed in 515 of these cases upon pleas of guilty or convictions. In 4 instances the defendants were acquitted and in 16 instances the cases were dismissed upon motion of the United States attorneys for various reasons.

Of the 44 civil cases that were concluded during the past year, 38 resulted in appropriate decrees, 3 were dismissed by the Government, and in 3 instances injunctions were denied.

The number of complaints received during the year totaled 2,498, as compared with 3,629 for the preceding year. However, the number of civil and criminal cases instituted in the Federal courts increased from 427 last year to 636. This reduction in complaints accompanying stricter and more comprehensive enforcement is an encouraging development.

In addition to enforcement duties, this section renders opinions and interpretations to the Commission's staff and the public on matters pertaining to part II of the act. During the year the handling of informal complaints not involving rate questions was transferred to this section from our Section of Complaints.

SECTION OF RESEARCH

This section completed during the year the work assigned to it in the preparation of a staff report in the investigation of the need for Federal regulation of the sizes and weights of motor vehicles (Ex Parte No. MC–15). This investigation is discussed elsewhere. The section also participated in the planning of a statistical survey of class II and class III motor carriers and of the wages and hours of motor-carrier employees. The latter survey was made for the Wage and Hour Division of the Department of Labor under a transfer of funds. The special analysis the section is making of motor-carrier accidents is mentioned elsewhere.

Other work during the year has consisted mainly of special investigations for the use of the Bureau and of the answering of numerous inquiries as to motor-carrier transportation and highway transportation generally. The amount of research work permitted by our funds is much less than is desirable for proper regulation.

SECTION OF SAFETY

Members of this staff have worked closely with other Federal agencies, State officials, and technical and safety organizations in the interest of highway safety. Among others, meetings have been held with the Insurance Safety Advisory Group, the I. C. C. Safety Advisory Committee of the Safety and Operations Section of the American Trucking Associations, Inc., and the Safety Committee of the National Association of Motor Bus Operators.

This section participated in hearings in Ex Parte MC–2, MC–3, and MC–4 with respect to our jurisdiction over motor-carrier employees other than drivers. We found that mechanics, loaders, and helpers perform duties which directly affect the safety of operation of motor vehicles in interstate or foreign commerce and are therefore subject to our authority to prescribe qualifications and maximum hours of service. Hearings have been held to determine what regulations should be prescribed for such employees, but no report has been issued. The section also has cooperated with the Bureau of Service in proposed revision of our regulations for the transportation of explosives and other dangerous articles. In addition, much time has been devoted to the investigation of the need for Federal regulation of sizes and weights of motor vehicles, as to which we reported to Congress on August 14, 1941.

Further advance was noted in the desirable trend toward uniform State and Federal safety requirements, as 2 more States adopted our safety regulations in whole or in part. This brings to 42 the number of States that have taken such action in the past 4 years.

A new edition of our safety regulations was prepared, embodying certain changes and the special provisions found necessary in adapting the general rules to private carriers. The revised regulations became available in printed form in March of this year, and to date have been served on 8,568 private carriers.

As we reported last year, brake tests of motor vehicles operated by carriers subject to our jurisdiction were conducted throughout the country by members of our field staff. A report summarizing the data obtained and making certain recommendations was released to the public during the year. In general, the report found the average brake performance to be below the standards set by our safety regulations. Certain causes were cited and further specific

research recommended. Serious study of the problem is now under way and additional tests have been conducted. Public agencies, manufacturers, and operators have joined with our representatives in an effort to bring about substantial improvement in this important safety factor.

Our safety regulations require common and contract carriers subject to part II to make detailed reports of the more serious accidents. During 1940, 2,503 such carriers reported 13,027 accidents which involved 998 fatalities, 9,851 personal injuries, and $5,449,403 property damage. This represents an increase of 173 percent over the number of accidents reported during 1939. A substantial part of this increase is due to a revision of our regulations effective January 1, 1940, lowering the minimum reportable property damage from $100 to $25, the actual increase in accidents of the type required to be reported in 1939 being 106 percent. Fatalities reported in 1940 increased 29 percent over 1939.

The large increase in the number of accidents reported to us in 1940 should not be accepted as evidence of a similar increase in motor accidents generally, although the general trend was upward. Several factors not related to accident frequency have contributed to the unusual upswing indicated in our figures. Among them were the lowering of the reportable property-damage minimum previously mentioned; the service upon all motor carriers of a copy of our revised regulations shortly before January 1, 1940; and a better general understanding of our accident-report requirements. During 1940, 1,173 carriers, nearly one-half of the total number reporting, submitted accident reports for the first time.

SECTION OF TRAFFIC

As stated in our previous reports, we are endeavoring to improve the rate publications of motor carriers. Tariff Circular MF–3, containing new regulations governing the publication and filing of tariffs of common carriers of property, became effective April 1 of this year. These regulations were designed to aid carriers in filing more definite and understandable tariffs, and a welcome improvement has already been noted.

Common carriers of passengers and property have filed 67,467 tariff publications during the year, and contract carriers of property have filed 3,147 schedules of minimum rates and charges. Of this number, 2,478 were rejected and returned as not in compliance with the provisions of sections 217 (a) and 218 (a) or our regulations issued thereunder. The tariffs and schedules retained in our files have been made available for public inspection in our 16 district offices as well as in our Washington office. Under section 220 (a),

copies of contracts of contract carriers are required to be filed with us, primarily for our confidential information. During the year this section received and indexed 5,554 such copies of contracts.

Applications received seeking special permission to establish rates, fares, and charges on less-than-statutory notice or waiver of certain of our rules numbered 5,040. Of this number, 4,138 specific orders were entered granting permission, and 814 applications were denied. The remainder were disposed of otherwise. Powers of attorney and certifications of concurrence filed aggregate 12,644. Correspondence during the year relating to tariff and schedule construction with respect to regulations promulgated under sections 217 and 218 consisted of 28,073 letters received and 34,914 letters written. In addition, 6,980 rate memoranda were prepared for our own use and for the use of other branches of the Government and shippers. Under section 219, 23 applications seeking authority to use rates depending upon or varying with released or declared values were received. Of this number, 15 were granted, 5 were withdrawn, and 3 are pending.

FIELD ORGANIZATION

During the year an additional subordinate office has been opened, giving our field organization a total of 16 district offices and 63 subordinate offices. There have been few changes in our field staff, other than replacements due to resignations. Decentralization of certain of the enforcement staff was completed during the year.

In addition to various other duties, the field staff continued its widespread enforcement program, the results of which are reflected in the part of this report dealing with the Section of Law and Enforcement. Special mention should be made of an intensive campaign to bring about more effective compliance with our regulations governing the filing of insurance or other security for the protection of the public. More than 10,000 investigations were conducted, and results were such that resort to court action was necessary in only 10 instances.

Much time of the staff was given also to enforcing the several parts of our safety regulations, especially those relating to hours of service of drivers and the proper equipping and maintenance of vehicles. During the course of this work vehicles and records were inspected at 1,848 motor-carrier terminals; 11,152 vehicles were checked for safety of equipment; and roads checks were made on 1,247 motor vehicles in actual operation.

In maintaining contact with carriers, shippers, and the public, our field staff conducted 304,033 interviews, wrote 240,454 letters, and submitted to us 155,166 reports of all kinds.

BUREAU OF SAFETY

A more detailed report of this Bureau is published as a separate document.

Except as otherwise specified, the report here made is for the year ended June 30, 1941.

ACCIDENT STATISTICS

Casualties on steam railroads in connection with the operation of trains during the calendar years 1939 and 1940 are summarized as follows:

Class of persons	Number of persons killed		Number of persons injured	
	1939	1940	1939	1940
Trespassers	2,234	1,977	1,943	1,765
Employees	400	475	6,988	7,956
Passengers on trains	27	75	2,503	2,530
Travelers not on trains	11	5	67	60
Persons carried under contract	4	4	262	188
Other nontrespassers	1,480	1,908	4,247	5,059
Total	4,156	4,444	16,010	17,558

In addition, 168 persons were killed and 12,032 injured in non-train accidents, in comparison with 206 killed and 12,109 injured in such accidents during the preceding calendar year.

Steam railroads carried 456,088,000 passengers 23,815,598,000 miles; there were 75 fatalities to passengers on trains, or an average of 1 fatality for each 317,541,307 miles traveled.

Fourteen employees were killed and 312 injured in coupling or uncoupling locomotives and cars, as compared with 11 killed and 285 injured during 1939. Fourteen employees on duty were killed and 162 injured by coming into contact with fixed structures, and 31 employees on duty were killed and 1,765 injured in getting on or off cars and locomotives. Eighty passengers on trains and travelers not on trains were killed, as compared with 38 killed during the preceding year. Of these 80 fatalities, 41 resulted from collisions and 25 from derailments of trains; 9 passengers on trains and 5 travelers not on trains were killed when getting on or off cars, being struck or run over, or through other miscellaneous causes. A total of 434 employees on duty were killed in train and train-service accidents, as compared with 376 during the preceding year. During the first 6 months of 1941, 8 passengers, 2 travelers not on trains, and 309 employees on duty were killed in railroad accidents of all kinds.

INVESTIGATION OF ACCIDENTS

The Bureau investigated 77 train accidents, of which 42 were collisions and 35 were derailments. The collisions resulted in the death of 88 persons and the injury of 614 persons; the derailments resulted in the death of 46 persons and the injury of 551 persons; the total was 134 killed and 1,165 injured.

The principal causes of the collisions investigated consisted of failure to obey a meet order, failure to clear time of opposing superior train, failure to provide proper flag protection for preceding train and failure to operate following train in accordance with signal indications, and failure to obey signal indications.

The derailments investigated included 17 instances where condition of track was involved, 3 instances of defective equipment, and 13 instances of improper operating conditions or practices; in 2 instances motor vehicles at railroad and highway grade crossings were involved.

Six of the most serious accidents investigated were: A head-end collision between a passenger train and a freight train caused by failure to obey a meet order and occupancy of a block without authority, resulting in the death of 43 persons and the injury of 5 persons; derailment of a passenger train caused by malicious tampering with the track, resulting in the death of 5 and injury of 121 persons; a head-end collision between 2 freight trains caused by occupancy of a block without authority, resulting in the death of 6 persons; a head-end collision between a yard engine and a passenger train caused by the train's being operated against the current of traffic under a clearance card indicating the block was clear when it was occupied by an opposing movement, resulting in the injury of 30 persons; a head-end collision between a freight train and a passenger train caused by failure of the freight train to clear the time of passenger train and using the forestalling device of the automatic train-stop system without first observing and obeying automatic block-signal indications, resulting in injury of 23 persons; and a head-end collision between a freight train and a deadhead passenger equipment train caused by failure properly to control speed of both trains in yard limits, resulting in the death of 4 and the injury of 2 persons.

A detailed report concerning each accident investigated is made public when completed.

GRADE CROSSINGS—RAILWAY WITH HIGHWAY

During the calendar year 1940 there were 4,104 accidents at highway grade crossings which resulted in the death of 1,808 persons and the injury of 4,632 persons. Automobiles were involved in

3,685 of these accidents, 1,576 persons being killed and 4,430 injured. There were 71 derailments of trains as a result of collisions between trains and automobiles, which caused the death of 51 persons and the injury of 79 persons. Of the total casualties resulting from derailments and other train accidents at highway grade crossings, 4 persons killed and 34 injured were railroad passengers, employees, and persons carried under contract. Information concerning accidents of this character, together with comparable statistics for the preceding 2 years, and the number of crossings, railway with highway, is shown in the following tables:

Accidents at highway grade crossings, years ended Dec. 31, 1938, 1939, and 1940

	1938			1939			1940		
	Number	Number of persons killed	Number of persons injured	Number	Number of persons killed	Number of persons injured	Number	Number of persons killed	Number of persons injured
Accidents at highway grade crossings	3,494	1,517	4,018	3,476	1,398	3,999	4,104	1,808	4,632
Accidents at highway grade crossings involving automobiles	3,070	1,307	3,783	3,065	1,190	3,744	3,685	1,576	4,430
Derailments of trains as a result of collisions between trains and automobiles	38	43	98	54	32	46	71	51	79
Miscellaneous train accidents as a result of collisions between trains and automobiles	121	88	69	129	70	59	187	113	90
Automobiles registered	29,485,680			30,615,087			32,025,365		
Railroad casualties:									
Passengers			47			42			20
Employees		21	59		20	64		8	60
Persons carried under contract			2						1
Total		21	108		20	106		8	81

Grade crossings, railway with highway

Years ended December 31—	Number at end of year	Number actually added and eliminated during the year		Net decrease
		Added	Eliminated	
1940	230,285	730	1,507	777
1939	231,104	868	1,554	686
1938	231,400	641	1,805	1,164
1937	232,322	895	1,843	948
1936	232,902	491	2,134	1,643
1935	234,231	887	2,071	1,184
1934	234,820	999	2,109	1,110
1933	235,827	788	2,029	1,241
1932	237,035	815	1,447	632
1931	238,017	1,265	1,664	399

ACCIDENT PREVENTION

By a proclamation issued August 18, 1941, the President directed attention to the wastage of human and material resources of the nation through accidents, and called upon all citizens in public or private capacity to engage in a campaign for the prevention of accidents.

Railroad accidents result in loss of the services, temporary or permanent, of skilled employees who suffer casualties; in the destruction of materials and equipment which are being transported; in loss of the use of cars and locomotives which are damaged or destroyed; and in disruption and delay in transportation service. Efficiency in railroad transportation is vital not only to the proper functioning of our industries but also to the free flow of the products of those industries. Efficiency can be attained only when a high degree of safety is provided and accidents are reduced to a minimum.

The provisions of law and the orders of the Commission upon which the work of the Bureau of Safety is based establish fundamental and minimum requirements which are essential to safe and efficient railroad operation. Effective administration of these provisions has been an important factor in the reduction in accidents and casualties which has been achieved during the past 20 years. Continued effective administration of these provisions is imperative. Current traffic conditions have introduced increased hazards.

Cars which have been stored are being placed in service, cars in service are being utilized to a greater extent, increased numbers of trains are being operated, there has been a material increase in the number of railroad employees who are engaged in or connected with the movement of trains, and extensive revisions of signal systems are in progress to expedite and safeguard increasing traffic. These conditions necessitate increased inspection and supervision to insure that safety is not sacrificed to the rush and hurry of the day, that defective equipment is not used in an effort to promote the convenience of the moment, and that there is no relaxation of the precautions and standards which are necessary for the safety of railroad operation and the protection of railroad employees who form the vital elements of an efficient transportation system. As the President very aptly stated, these unusual times require unusual safety efforts. The maintenance of adequate safety standards in railroad operation is essential to the uninterrupted flow of traffic and the proper development and functioning of national-defense activities.

SAFETY APPLIANCES

Ninety-one cases of violation of the safety-appliance laws, comprising 153 counts, were transmitted to United States attorneys for prosecution; cases comprising 141 counts were confessed, and 4

counts dismissed. During the year 3 cases comprising 6 counts were tried, and all were decided in favor of the Government. The 2 counts under advisement by the court last year are still pending. On June 30, 1941, 45 safety-appliance cases containing 77 counts were pending in the district courts.

The safety appliances on approximately 1,120,000 cars and locomotives were inspected. The number of safety-appliance defects per 1,000 cars and locomotives inspected was 29.15, as compared with 30.43 for the fiscal year 1940 and 29.89 for the fiscal year 1939.

During the year attention has been given to a number of matters which affect safety of railroad employment and travel.

In our report of July 18, 1924, we directed attention to the necessity for improvement of air-brake systems. Pursuant to the recommendations contained in that report, the Association of American Railroads subsequently adopted revised specifications for power brakes of freight cars and later prescribed a rule, effective January 1, 1935, which provided for the progressive installation, on cars in interchange, of air-brake equipment conforming to these revised specifications; this program was to be completed on or before January 1, 1945. On June 30, 1941, after this rule had been in effect 6½ years, or 65 percent of the allotted period, only 25.78 percent of the freight cars in interchange had been equipped in accordance with this rule. Analysis of the situation as of December 31, 1940, disclosed that 1,031,658 cars which were not then equipped with the improved type of air brakes, owned by 125 railroads, were scheduled to be continued in service beyond January 1, 1945, and that only 71,622 of these cars were scheduled to be equipped with the new type air brakes during the year 1941. On this basis more than 14 years would be required to complete the installation; furthermore, 53 of these 125 railroads, owning 347,322 of these cars, reported no air-brake conversion program for the year 1941. The facts indicate that action to expedite this improvement is necessary.

Further tests were made during the year to determine the proper cleaning period for the new standard air-brake equipment.

The Bureau has kept in touch with developments and tests of brake equipment designed for control of trains which are operated at high speeds, including designs which apply the braking force to surfaces other than wheel treads.

The efficiency of geared hand brakes being furnished under the standard specifications adopted by the Association of American Railroads in 1935 is under consideration. Tests have been made to determine whether certain of these brakes comply with the specifications; the results of these tests are not yet available.

During the year, at the request of the Department of the Interior, representatives of the Bureau inspected a number of cars offered for sale to the Alaska Railroad.

HOURS OF SERVICE

Hours-of-service reports were filed by 755 railroads, of which 581 reported no instances of excess service. The remaining 174 railroads reported a total of 7,409 instances of excess service, as compared with 4,269 instances reported by 160 railroads for the preceding year, an increase of 14 railroads and an increase of 3,140 instances.

Twelve cases of violation of the hours-of-service law, comprising 45 counts, were transmitted to United States attorneys for prosecution. Cases comprising 31 counts were confessed. On June 30, 1941, 9 cases containing 36 counts were pending in the district courts.

SIGNALS, INTERLOCKING, AND AUTOMATIC TRAIN-STOP AND TRAIN-CONTROL DEVICES

On January 1, 1941, signal systems, interlocking, and automatic train-control devices were in use as follows:

Block-signal systems

	Miles of road	Miles of track
Automatic	65,691.9	96,459.4
Nonautomatic	47,282.6	49,404.7
Total	112,974.5	145,864.1

Interlocking

Number of plants	4,500

Automatic train-stop, train-control, and cab-signal devices

	Miles of road	Miles of track	Locomotives
Intermittent [1]	6,459.0	11,994.0	5,574
Continuous	4,168.7	8,586.0	4,682
Total	10,627.7	20,580.0	10,256

[1] Listed under intermittent are 389 locomotives having dual intermittent-continuous equipment.

Detailed information concerning these installations is contained in the annual signal bulletin, published separately.

During the year 1,088 applications for approval of proposed modifications of signal and interlocking installations were filed, and 979 applications were acted upon. At the close of the year, action was pending on 229 applications.

Approval was given with respect to two applications on which hearings were held and upon which action was pending, as noted in the report for last year.

Action was taken on 15 applications upon which hearings were held during the year, 9 of which were granted and 6 denied; action is pending on 4 applications upon which hearings have been held.

Our order, dated April 13, 1939, prescribing rules, standards, and instructions for installation, inspection, maintenance, and repair of systems, devices, and appliances covered by section 25 of the Interstate Commerce Act, provides that these rules, which became effective September 1, 1939, may not be modified without our approval. On July 1, 1940, 11 applications for approval of modifications of certain sections of these rules, or extensions of time within which certain sections become effective, were pending; during the year ended June 30, 1941, a total of 47 applications of this nature were filed; 50 applications were acted upon during the year and 1 was withdrawn; at the close of the year 7 applications were pending.

Monthly signal-failure reports filed by the carriers during the period from July 1, 1940, to June 30, 1941, inclusive, are summarized as follows:

False restrictive failures	35,655
False proceed failures	233
Potential false proceed conditions	33

Under section 25 (d) of the Interstate Commerce Act, we are authorized to inspect and test block-signal systems, interlockings, automatic train-stop, train-control, and cab-signal devices, and other similar appliances, methods, and systems intended to promote safety of railroad operation. Pursuant to these provisions, inspections were made during the year as follows:

Block-signal systems	386
Interlockings	739
Automatic train-control and cab-signal devices	116
Centralized traffic-control systems	34
Other similar appliances, methods and systems	12
Total	1,287

In United States *v.* Seaboard Air Line Railway Company (L. R. Powell, Jr. and H. W. Anderson, Receivers) and Atlantic Coast Line Railroad Company, suit was instituted under the Act of August 26, 1937, U. S. C., title 49, section 25, for violation of section 315 of the rules promulgated thereunder by the Commission under date of April 13, 1939, relating to the speed of trains through interlocking not equipped with operative approach signals. This case was disposed of by confession of judgment.

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EXAMINATION OF DEVICES

Plans of 11 devices designed to promote safety of railway operation were examined by our engineers, and reports thereon were transmitted to the proprietors or their agents.

MEDALS OF HONOR

Three applications for medals of honor under the act of February 23, 1905, have been filed during the year, all of which were denied.

Since the passage of this act, 77 applications have been filed, of which 47 have been approved and 30 denied.

BUREAU OF SERVICE

The activities of this Bureau during the past year have been devoted principally to assisting the railroads in maintaining an adequate car supply. During times of car surplus, shippers and receivers are often prone to delay loading and unloading cars, and no special effort is made by the carriers to secure their prompt release or to expedite movement through terminals. Because of the conditions described herein under the heading "Transportation and the National Defense," it became increasingly necessary to utilize all transportation facilities to the utmost. This means that empty cars must be loaded promptly after placement and, so far as practicable, to full capacity, and be removed promptly after loading, and that loaded cars must be handled with like expedition.

During the first 10 months of 1941, the railroads handled the largest amount of traffic moved in any comparable period since 1930, when the volume was only slightly greater. The number of freight cars available to move the traffic in 1941 was approximately 73 percent of the number available in 1930. To move the same amount of traffic with 27 percent less cars necessitated better utilization. The average turn-around per-car trip in September 1930 was 15.7 days, whereas the average in September 1941 was 12.5 days. The percentage of bad-order cars in 1930 was 6.2, whereas it was 4.4 as of October 1, 1941. This latter figure, incidentally, is the lowest percentage for bad-order cars in railroad history. Between October 1, 1940, and October 1, 1941, surplus boxcars decreased from 33,351 to 15,194, a difference of 18,156 cars, or 54.4 percent. Surplus gondola cars, used chiefly for coal and coke, decreased from 23,889 to 10,442, a difference of 13,447 cars, or 39.7 percent. For all freight cars the surplus decreased from 74,977 to 41,206, a difference of 33,771 cars, or 45 percent. During the same period, freight cars owned increased from 1,641,540 to 1,657,630, a difference of 34,090 cars, or 2.1 percent. During that period 71,569 new railroad-owned cars were added to

the equipment, and approximately 40,000 cars were retired because of obsolescence.

Our utmost effort has been and is being put forth to see that the fullest possible utilization is being obtained from every available locomotive and car. The steps which we have taken to augment the force of the Bureau are described under the heading "Transportation and the National Defense."

On the basis of average net ton-miles per car-day, as distinguished from the basis of number of cars loaded, the carloading performance during the week ended October 18, 1941, was the best for any week in railway history, even exceeding that of the peak week in the year 1929.

Our service agents report instances where they find shippers holding cars an unreasonable time for loading or unloading. Tremendous plant expansion has taken place. In some instances, not enough space was provided at the unloading points of these new projects; in other instances, the supply of labor was inadequate for prompt loading and unloading. Sometimes the shippers or consignees preferred to pay demurrage for car detention rather than unload their goods promptly. One instance was reported where about 550 loaded cars consigned to a contractor were being held at destination, and another where 165 loaded cars were being held unduly awaiting out-bound movement. One of our service agents checked the railroad records at 6 cities, and found 1,808 cars being held from 3 to 30 days each, at 199 industries. When the attention of the appropriate officials of railroads and industries was directed to the fact that such car delays amounted to abuse of a privilege, the situations were promptly corrected. These are merely examples of a great number of instances, similar in character, which have been and are still being handled for correction. The beneficial results obtained have been gratifying.

During the last World War, the uncertainties as to ocean transportation made it unusually difficult to secure expeditious or regular movement of export freight through the ports, and this led to great congestion with consequent delay of equipment at the ports and on lines leading thereto. The situation became so acute that we urged upon the executives of the eastern railroads united and cooperative effort to improve it. Some improvement was noted, but congestion, delay, and shortage of cars continued. During the present emergency, many American vessels formerly used in the coastwise and intercoastal trades have been diverted to trans-Atlantic or other ocean service because of war conditions. A large part of the traffic formerly handled by water has thus been diverted to the rail carriers. In order to avoid congestion at the ports like that which occurred during the last World War, a well organized and determined effort has been made at the Atlantic and Gulf ports to anticipate so far as possible the

freight requirements, so that car lading can be promptly unloaded on board the vessel or placed in storage until such time as it can be moved to vessels. This plan has proved very effective in retaining a great number of railroad cars in active service which might otherwise have been held at the ports under load for indefinite periods of time.

In our last two annual reports we have referred to our emergency powers. No need has arisen up to this time for the exercise of those powers, but they are available and ready for use and can be most helpful in the event that serious congestion of traffic should develop.

During the year representatives of the Bureau conducted hearings, completed reports, or otherwise participated in the disposition of approximately 15 formal cases relating to car service, operating practices, and mechanical and safety matters. It has likewise cooperated with other bureaus in making field investigations in connection with cases handled by the latter.

Numerous informal matters and complaints relating to car service, brought to our attention directly or through our service agents, were disposed of as each case required. These usually relate to the furnishing of suitable and sufficient cars within reasonable time, prompt movement of freight, delays through, into, or out of terminals, congestion at terminals, mills and elevators, misuse of cars, interchange of equipment, assessment of demurrage, and disputes of various kinds between or among shippers and carriers. These cases are often handled by our service agents in the field directly with the parties concerned, and adjusted to their satisfaction. Such handling diminishes to a considerable extent the number of cases that would otherwise come before us for formal disposition.

The usual large number of demurrage complaints and disputes were received and disposed of informally. Since May 15, 1929, 5,054 such complaints have been adjusted without formal procedure.

During the year various local embargoes were placed by carriers because of floods, strikes, fires, and seasonal or weather conditions, and to prevent accumulations and congestions which might have caused excessive detention to equipment. Embargoes were also placed by steamship companies at a number of ports because of a shortage of vessels and inability to guarantee clearance of shipments. These embargoes were modified as conditions warranted and canceled when the need for them no longer appeared. Our field force located in districts affected kept informed with respect to local situations when and where embargoes were in effect or needed, advising the Bureau of current conditions; and the latter maintained close contact with the Association of American Railroads as to remedial actions necessary.

Demands upon the Bureau for safeguarding transportation of explosives and other dangerous articles increased materially under the defense program. Our regulations applying to the movement of

articles by rail and water underwent general revision effective January 7, 1941. Two orders containing a number of amendments thereto were made effective. Canadian regulations also underwent a similar revision effective December 2, 1940. Rail and water transportation of explosives and other dangerous articles is thus safeguarded by substantially the same regulations in the United States and Canada.

Action affecting use of materials subject to priority orders includes our authority for 25 tank-car tanks constructed of Toncan iron instead of steel for experimental transportation of sulphuric acid; authority for so-called single-trip metal drums for two trips; one-trip glass carboys for export service; glass bottles instead of metal cans as inside containers in outside boxes; wooden barrels instead of metal containers for certain corrosives; laminated cloth and paper bags treated with waterproofing for insecticides; and conversion of excess metal drums from one service to another as shortages occur.

Accidents involving three experimental fusion-welded tank-car tanks provided information justifying our confidence in this new form of construction. In one car the tank head was bent inward about 7½ inches over an area 50 inches in diameter, and heads and welded seams withstood severe shock, without the puncture of metal or the opening of any seams. In another accident, 19 cars, including one having a fusion-welded tank loaded with highly volatile liquid, were derailed, and 17 cars were completely destroyed. The wrecked fusion-welded tank was loaded onto a flatcar and moved to shipper's station without loss of lading. Examination and tests prove that tanks of fusion-welded construction withstand tremendous impacts without destructive damage, and in the January 1941 general revision of the regulations, authority is given for the construction and use of such cars under the same general conditions and restrictions as apply to cars previously authorized having tanks of riveted and lap-welded types.

The Bureau of Explosives, a carrier organization, reports for 1940 a total of 730 samples of dangerous materials examined, including 91 samples of explosives. Total property loss reported for 1940 as due to accidents chargeable to the transportation of explosives and other dangerous articles was $142,829. Of this amount, loss of $76,810 resulted from fires in shipments of gasoline in tank cars, whereas the average loss per year for the 10-year period 1930–39 was $352,380, and the average tank-car gasoline loss for the same period, $245,851.

A survey was made of pipe-line transportation of inflammable liquids for the purpose of determining the character of regulations if need therefor should be found. A survey is also under way concerning pipe-line transportation of gases.

General revision has been completed of regulations covering the transportation of explosives and other dangerous articles and applying to common and contract carriers by motor vehicle. Private-carrier transportation of such commodities by motor vehicle is receiving attention with a view to determining the character of regulations if need therefor should appear.

BUREAU OF STATISTICS

As a result of the provisions of the Transportation Act of 1940, the number of water carriers from which annual and other reports may be required was considerably increased. We adopted an order dated May 5, 1941, requiring each water carrier subject to part III of the Interstate Commerce Act to file a quarterly report of revenues and traffic. The order was served on 802 water carriers believed to be now subject to the provisions of the act, although the list will be considerably modified after claims for exemption by individual carriers are considered. Annual reports will also be required of all such water carriers beginning with the report for the year 1941, although the adoption of a report form based on a uniform system of accounts must be postponed for a year as the revised system of accounts for water carriers will not become effective prior to January 1, 1942. In the development of the forms for water carriers we are cooperating with the Division of Statistical Standards of the Bureau of the Budget as well as with the representatives of the industry.

There was a further development of motor-carrier statistics during the year. The condition of the 1939 reports from class I motor carriers was better than that of the 1938 reports, and a somewhat more extended summary was issued for the year 1939 than for 1938. The extensive correspondence required in verifying these reports in the Bureau of Motor Carriers and the pressure of other work in the Bureau of Statistics resulted in delaying the issue of the 1939 volume by nearly a year. The 1940 issue will also be somewhat delayed for the same reasons, there having been no increase in staff in this Bureau to handle motor-carrier statistics.

As indicated in previous annual reports, the matter of system consolidated statements for steam railways has had the extended consideration of this Bureau. In furtherance of this project, the Bureau of Accounts organized during the year a field unit of several accountants for the purpose of preparing such statements directly from the books of leading railroad systems in accordance with the program for such reports formulated some time ago by this Bureau with the assistance of the Bureau of Accounts. It is expected that the work of this unit will demonstrate the practicability of such reports.

Among the special assignments of work during the year, the preparation of exhibits for use in the Class Rate Investigation, 1939, Docket No. 28300, was the most important. In this connection, studies were made of the distribution of natural resources of the United States by freight-rate territories, progression for distance in freight-rate mileage scales, and railroad freight-service costs in the various rate territories. The first of these exhibits undertook to bring together and distribute by freight-rate territories the available statistics regarding the natural resources of the United States as measured by reserves of mineral fuel energy, metallic and nonmetallic minerals, and forest land and timber, by the actual and potential production of water-power energy; by the quantity and quality of agricultural land, acreage, production and farm value of principal crops, and production and value of livestock and livestock products; and by the gainful workers in the United States engaged in various classes and kinds of occupations. The interterritorial cost exhibit undertakes to show in cents per 100 pounds what it costs railroads to carry freight various distances in each rate territory, with a separate showing for various types of cars and various tons of load per car. The cost is made to include operating expenses, rents, and taxes, with modifying factors to use if it is desired to allow for a return on investment in the railway plant.

Among other special studies completed since our last report are the following:

1. *Freight Rates on Bituminous Coal, with Index Numbers, 1929–1940.* Statement No. 413 gives a survey of the bituminous-coal rate structure and of the changes in the rates during a 12-year period. When similar studies for other leading commodities are completed, a general freight-rate index number can be prepared.

2. *Freight Revenue and Value of Commodities Transported.* Statement No. 4045 estimates the market value of the goods transported by class I steam railways in the year 1939 at slightly over $40,000,000,000. The freight charges assessed by the railways amounted to 8.43 percent of this sum.

3. *Rail-Highway Grade-Crossing Accidents.* Statement No. 4113 analyzes statistics relating to 4,104 accidents at rail-highway crossings in the year 1940. These resulted in the death of 1,808 persons and in the injury of 4,632.

4. *Railway Statistical Terms.* Statement No. 4119 is a collection of definitions of words and phrases frequently used in discussions of railway statistics.

5. *Factors Affecting the Demand for Rail Passenger Travel.* Preliminary examination in statement No. 4129 attempts to measure the elasticity of demand for passenger service.

6. *Fluctuations in Railway Freight Traffic Compared with Production.* Statement No. 4130 carries through the year 1940 similar studies for previous years.

7. *Seasonal Variation in Pullman Passenger Travel.* Statement No. 4136 develops seasonal factors for Pullman revenues and passenger miles in the period 1923 to 1941.

The cost-finding section in this Bureau checked and analyzed exhibits or testimony relating to the cost of performing transportation service in 18 rate proceedings during the year and has developed formulas for finding costs for particular types of movements involved in rate cases. Very little has been done as yet in developing formulas and cost scales for movements by truck.

A list of the annual, quarterly, and monthly publications regularly issued from this Bureau will be found in the Statistics of Railways. There has recently been added a monthly mimeographed review of the principal developments shown by these publications.

The total number of statistical reports of all kinds, including reports of motor carriers, received during the year ended June 30, 1941, from carriers was 42,270, consisting of 4,065 annual reports, 7,519 quarterly reports, 29,637 monthly reports, 394 special reports, and 655 replies to cost-finding questionnaires. In nearly all cases these are sworn reports. In arriving at this total, a monthly report from a carrier is counted as 12 for the year and a quarterly report as 4, regardless of the number of sheets included.

Few modifications of importance in the routine statistics were made during the year. A schedule requiring a statement of contingent assets and liabilities has been inserted in the annual report forms for steam railways.

Field investigations of various railways are in progress to test the accuracy and completeness of the accident reports received in this Bureau. The Bureau of Safety is participating in this investigation. Suit has been brought against one railway for failure to comply with our regulations for reporting accidents.

By request, four-fifths of the time of the assistant director of this Bureau for the last 6 months of the fiscal year was spent at the Office of Production Management in connection with the organization of the priorities work of that agency's Bureau of Research and Statistics.

At the request of the National Resources Planning Board and with the consent of the Commission, the assistant director and another member of the Bureau's staff have assisted that agency in the preparation of its report on the transportation industry.

In the year 1940 there was a further slight decline in the miles of road operated by class I steam railways. There was, however, an

increase of $130,886,000 (after deducting accrued depreciation) in the investment account of the properties operated. The only other year after 1931 showing a net investment increase was 1937. A review of the traffic and earnings of the railways in 1940 and of other transport agencies will be found in an earlier section of this report. Statistical summaries drawn from carrier reports will be found in section C.

BUREAU OF TRAFFIC

The functions of the Bureau of Traffic have been described in our previous reports. (See Forty-fifth Annual Report, pp. 63–64.) These functions now embrace, except as to all-motor transportation, the administration of the provisions of the act relating to rates, tariffs, and schedules for all transportation subject to the act, including water-carrier transportation brought within the Commission's jurisdiction by the Transportation Act of 1940. Effective June 16, 1940, the suspension activities of the Bureau of Motor Carriers were merged with those of this Bureau, and since that time suspension matters, as affecting the rates or schedules of all carriers subject to the act, have been handled by the unified Board of Suspension.

The work of the Bureau has materially increased because of the practice of carriers in recent years of supplanting individual tariffs by large consolidated tariffs which, although tending to reduce the number of tariffs, increases the work of the Bureau because of the greater complexity of such consolidated tariffs, and particularly because of the jurisdictional and administrative problems which have arisen in connection with the newly conferred jurisdiction over water carriers and with amendments to the fourth section affecting water and other carriers.

Section 6 of the act provides that "for the use of the public," copies of tariffs of carriers subject to part I "shall be kept posted in two public and conspicuous places in every depot, station or office" where passengers or freight are received for transportation, but authorizes the Commission "in its discretion and for good cause shown," to modify such requirements "either in particular instances or by a general order applicable to special or peculiar circumstances or conditions." We recently denied a petition of the rail carriers for a modification relieving them from the necessity of posting any tariffs at stations where, as disclosed by their investigation, there is no public use or need for such tariffs. That action was taken because it was considered that a sufficient showing had not been made to warrant the breadth of the relief prayed for. In this connection it may be emphasized that we consider and have assumed that, under the discretionary authority conferred by the statute, we have the power to grant relief from the statutory posting requirements to

such extent as may be compatible with the public interest and with the announced purpose of the statute to impose such requirements in order that tariffs may be available "for the use of the public," although we have not heretofore exercised that power to accord relief as broad in scope as that sought in the above petition.

The year has been marked by pronounced rate competition between rail carriers and motor carriers. Numerous reductions in rates have been initiated both by rail and by motor carriers, not because they considered that the existing rates were unreasonable, but solely in the hope of taking traffic away from, or regaining in whole or in part traffic which had been lost to, the competing form of transportation and of retaining the traffic thus obtained. The situation suggests that, in many instances at least, such reductions have been initiated without full consideration of whether such reductions could reasonably be expected to accomplish the end sought in view of probable retaliatory reductions by the competing form of transportation with resulting depletion of revenues of all of the carriers concerned. On the other hand, through their associations the one class of carriers has indulged in the practice of protesting proposed rates of the other class of carriers merely because the proposed rates were indicated as reductions and purely as a matter of routine. This competitive situation, and that between rail and water carriers which has been less pronounced than that between rail and motor carriers, is reflected in the number and character of the protests and requests for suspension filed by such carriers.

Data covering particular activities of subdivisions of this Bureau during the year are shown below.

SECTION OF TARIFFS

There were filed 90,143 tariff publications containing changes in freight, express, and pipe-line rates, passenger fares, and freight-classification ratings. In addition thereto, 425 publications were received for filing, but were rejected for failure to give the notice required by the statute. Powers of attorney and certificates of concurrence filed aggregated 16,008. Applications received seeking special permission to establish rates or fares on less than statutory notice or waiver of certain of our tariff-publishing rules numbered 9,155. Specific orders were entered granting 8,722 and denying 433 of these applications. Correspondence relating to tariff construction in accordance with our rules and regulations promulgated under the act consisted of 24,274 letters received and 17,217 letters written. For our own use, as well as for the use of other branches of the Government, 3,394 rate memoranda were prepared. Our duplicate tariff file has been maintained for the use of the public.

We have freely exercised our authority to permit changes in rates upon less than statutory notice in the interest of prompt establishment of necessary rates to and from Government defense projects and for the benefit of industries engaged in defense activities.

SUSPENSIONS

Rate adjustments were protested and suspensions asked in 1,926 instances. Of these protested adjustments, 1,576 represented reductions, 232 represented increases, 40 represented both increases and reductions, and 78 neither increases nor reductions. They covered not only a large number of rate schedules, but many thousands of rates.

The following action was taken on the requests for suspension:

Suspended (including supplemental orders)	785
Refused to suspend	619
Schedules rejected, requests for suspension withdrawn, or protested schedules withdrawn	522
Total	1,926

Of the suspended adjustments, 349 were disposed of through informal proceedings, together with 65 adjustments suspended during the previous year.

Over 860 motor adjustments were protested by rail carriers, and over 175 rail adjustments were protested by motor carriers, these adjustments representing reductions in rates. Over 90 percent of such protests were filed by associations of carriers. One large rail-carrier association alone filed protests against more than 300 of such proposed motor-rate adjustments, and a single motor-carrier association filed protests against approximately 35 of such proposed rail-rate adjustments. Many of these association protests were evidently filed *pro forma*, being identical in form and containing only general allegations of unlawfulness. Water carriers protested about 60 reduced rail-rate adjustments, while only a very few water adjustments were protested by rail carriers.

THE FOURTH SECTION

The number of applications was 677. The number of orders entered in response to applications was 623, of which 60 were denial orders, 268 were orders granting continuing relief, and 295 were orders authorizing temporary relief. One hundred and fifty-seven formal reports were issued.

Applications withdrawn wholly or in part after correspondence with carriers numbered 36, and 177 applications or portions thereof were heard in fourth-section proceedings.

The number of petitions for modification of orders was 219, of which 225 were granted, 40 were denied, 1 was withdrawn, and 25 are still pending.

In making water common carriers subject to the prohibitions of the fourth section of the act, the Transportation Act of 1940, although authorizing the continuance of existing rates for a specified period and pending action on applications duly filed within such period, made no specific provision for changes in such rates that might become necessary in the ordinary course of business. Upon application of the carriers, we entered an order, pursuant to the discretionary authority conferred by the statute, granting such carriers relief from the provisions of the fourth section to the extent of permitting such latter changes, subject to the proviso that discrimination against intermediate points should not be greater than that in existence March 1, 1941, except under certain specified competitive circumstances.

EXPRESS

Of the tariff publications filed, 1,244 represent changes in express rates and classification ratings. Of the applications received seeking special permission to establish rates on less than statutory notice or waiver of certain of our tariff-publishing rules, 160 related to express rates.

RELEASED RATES

There were filed 10 applications for authority, under section 20 (11) of the act, to establish rates dependent upon declared or agreed values, and 3 such applications were pending at the beginning of the year. Of these, 4 were granted, 4 were withdrawn, 1 was denied, and 4 are pending.

BUREAU OF VALUATION

During the past year the Bureau's activities have been chiefly in connection with matters pertaining to steam railroads, such as the policing of reports of property changes; the collection of data with respect to values and costs; the correction of inventories previously made; and the preparation and presentation of exhibits in cases before the Commission and courts. The valuation of pipe lines was carried on only as it could be done without interference with other work. The Bureau has also been active in complying with an increasing number of requests from national-defense agencies for data and information of various kinds, and values of properties desired for Army and Navy purposes, extension of shipbuilding plants, and aviation fields. Other Government departments, State, county, and municipal authorities, and the public have continued to make numerous requests

for information or access to records. The Bureau has complied with such requests insofar as it was able to do so.

Cost-of-service cases.—Our docket with respect to cost-finding analyses has continued heavy throughout the year. The Bureau prepared valuation exhibits showing for a large number of carriers the original cost, cost of reproduction new, and cost of reproduction less depreciation, the value of lands and rights, the working capital used, and its recommended final values, in some instances for segregated parts of a railroad used in rendering a specific service or for the movement of a particular commodity. The principal cases of this kind during the year have been:

Docket No. 28300, the Nation-wide class-rate investigation, in which the Bureau was called on to recommend values for all class I railroads for inclusion in cost formulas served on the carriers.

Docket No. 15234, Division of Freight Rates in Western and Mountain-Pacific Territories.

Docket No. 27766, Alden Coal Co. *v.* Central Railroad of New Jersey et al., involving rates for movement of anthracite to tidewater, for which, as in the *Class-Rate case*, recommended values were furnished.

Docket No. 26459, Florida East Coast Railway et al. *v.* Atlantic Coast Line Railroad Company et al., pertaining to divisions of rates on fruits and vegetables from Florida to eastern territory.

Docket No. 28190, Transportation of new automobiles by rail from points of production.

Other cases.—In the proceeding known as ex parte No. 138, Opening Journal Entries for Reorganization of Chicago Great Western Railroad Company, 247 I. C. C. 193, our order directed that property includible in the primary road and equipment accounts of the new company created to take over the properties of the old company should be recorded in those accounts at original cost, or estimated original cost, as found by the Bureau of Valuation. As the result of that order, the Bureau is assembling the necessary information to enable it to report the original cost by primary accounts for the opening entries of a large number of carriers as they emerge from receivership or bankruptcy proceedings, or for use in mergers or consolidations, or if individual carriers may wish voluntarily, with our permission, to set up their books on the basis prescribed for the Chicago Great Western.

During the year the Bureau has furnished valuation data in the reorganization cases of the New York, Susquehanna & Western Railroad Company, the Florida East Coast Railway Company, and the Central of Georgia Railway Company. It was also called on to prepare valuation exhibits and studies for our investigation of warehousing and storage of property at the port of New York, Ex Parte No. 104, part 6.

As the year closes, the Bureau, at the direction of the Commission, is completing the work of reporting final values for all operating steam-railway companies, including properties operated by them under lease or otherwise, which recommended values are for use in analyzing earnings and return on values in lieu of investments as recorded in the balance sheets. Only lump-sum values are required for such analyses. The work does not relieve the Bureau of any of the procedure necessary to comply with paragraph Fifth (f) of section 19a.

The Commission, through the Bureau, has been making every effort to comply with paragraph Fifth (f) of section 19a of the Interstate Commerce Act, which requires it to do those things that are necessary to keep itself informed of property changes and to collect and prepare and "have available at all times" the information necessary to revise and correct its previous inventories, classifications, and values. For several years the program calling for valuation data and reports has been so heavy, and the force of employees has been so reduced, that the Bureau has been unable to keep current in revising its inventories and records in the detail contemplated by the act. This is due in major part to the inadequacy of the departmental staff to carry all reports of property changes into the continuous inventories and records. However, the information is available in our files, to be supplemented, where necessary, by recourse to the annual reports filed by the carriers for consideration of recent changes on a money instead of an inventory basis.

Valuation of pipe lines.—Because of a heavy program in other important activities, the valuation of pipe lines was not pushed during the past year, although some work was done in connection with new lines. As previously reported, the basic program of valuing interstate pipe lines, approximately 93,000 miles, is completed, and the Bureau is now engaged in collecting and checking data necessary to keep those valuations current.

Work done for other Government agencies.—During the year, the Bureau has responded to requests for valuation and other expert aid received from the Departments of Agriculture, Justice, Labor, Navy, Post Office, Treasury, and War, and various independent agencies, including the Federal Communications Commission, Federal Power Commission, Federal Works Agency, Home Owners Loan Corporation, Civil Aeronautics Board, National Resources Planning Board, Reconstruction Finance Corporation, and Securities and Exchange Commission. The requests from the War and Navy Departments and new agencies such as the Office of Price Administration have all been in the interests of national defense, and such requests have been given priority over other work of the Bureau.

Inquiries.—Requests for information and data from State, county, and municipal authorities and the public continued throughout the year in heavy volume.

BUREAU OF WATER CARRIERS

The Bureau of Water Carriers was organized on January 6, 1941. The following duties have been assigned to it: All administrative matters relating to exemptions, under section 302 (e) and section 303 (b), (c), (d), (e), (f), (g), and (h); the granting of certificates and permits, under section 303 (1), section 309 (a), (b), (c), (d), (f), and (g), and section 310; inquiries into management, et cetera, arising under section 304 (b); the classification of carriers into groups, under section 304 (c); relief because of foreign competition, under section 304 (d); complaints as to compliance, under section 304 (e); and the granting of temporary authority, under section 311 (a). All formal hearings with respect to any of the above matters, however, are conducted by the Bureau of Formal Cases.

The principal task confronting the Bureau since its organization, and probably for the year to come, is in connection with applications for certificates of public convenience and necessity and for permits filed, respectively, by common and contract carriers by water engaged in the transportation of passengers or property in interstate or foreign commerce, and in connection with applications for exemptions filed by such carriers under certain provisions of the act.

Applications for operating authority have been filed by 765 common or contract carriers by water. The Bureau has completed a preliminary investigation of these applications to determine the ones that may be granted or denied on the basis of the applications and the proof submitted in support thereof; the number requiring a field investigation before the applications may be granted or denied; and the number which must be set for formal hearings before a proper determination may be made. This investigation discloses that approximately 133 applications may be granted or denied upon the basis of the applications, approximately 479 will require investigation in the field, and 153 must be set for formal hearing, because protests have been filed or because of complicated factual or legal situations.

Upon the completion of the field investigation, the staff of the Bureau of Water Carriers will examine the data obtained and recommend what action should be taken on each application. The Bureau's staff will prepare for our adoption reports, orders, certificates, and permits in all proceedings which are not set for formal hearing. The Bureau of Formal Cases will prepare such documents in proceedings requiring formal hearings.

Four hundred and ten applications for exemption were filed under the provisions of sections 302 (e), 303 (e), and 303 (h), 7 of which were subsequently withdrawn. Of these applications, 63 have been set for formal hearing, 122 have been denied, 117 dismissed, and 13 granted, and 88 are awaiting action.

Eighty-five applications for temporary authority under the provisions of section 311 (a) have been filed, 50 having been subsequently withdrawn. These applications are based upon an alleged immediate need for the services sought to be established. Temporary authority has been granted in 22 applications, 3 have been denied, and 10 are pending.

Because of the national emergency, many vessels customarily engaged in the coastwise or intercoastal trade have been, or are being, diverted to the foreign trade. Likewise, vessels normally engaged in transporting commodities for shippers generally have been and are being diverted to the transportation of property for defense projects. This condition has made it imperative to grant temporary authority for substitute operations, or to meet the new needs that arise from defense projects. This condition will probably continue, and may become intensified, during the period of the national emergency.

The period of administration of the provisions of part III has not been long enough to permit any comprehensive report on the management of the business of water carriers, or of persons controlling, controlled by, or under a common control with water carriers, as contemplated under section 304 (b). Under the authority of that section, however, the necessary information is being accumulated.

We have had no occasion to exercise the authority granted us under section 304 (d) to relieve any carrier subject to part III from its provisions in order to eliminate undue disadvantages suffered by such carrier by reason of competitive water transportation to or from a foreign country.

WORK OF LEGISLATIVE COMMITTEE

During the first session of the Seventy-seventh Congress and to the date of this report, 55 reports on bills or resolutions were submitted on behalf of our Legislative Committee or of the Commission. These reports were directed to the chairman of the Senate or House committee from which came the request for the report, and contained criticisms, suggestions, and recommendations in regard to the bill or resolution in question. One of them, in regard to various bills relating to the subject of administrative procedure, was of great length, and extensive reports were submitted on the proposed freight-forwarder

legislation. The Commission was represented at the hearings before a subcommittee of the Senate Committee on the Judiciary on the bills relating to administrative procedure by one of its members, who testified at two of the public sessions.

LEGISLATIVE RECOMMENDATIONS

We submit the following recommendations for legislation:

1. We recommend that section 17 of the Interstate Commerce Act be amended so that (*a*) an individual Commissioner or board of employees to whom we delegate work, business, or functions shall have the same authority to act upon the matter initially that the Commission or a division thereof would have, if there were no such delegation; (*b*) we may delegate work, business, or functions to a board composed of an employee or employees of the Commission with full discretion as to the number and selection of such employees; (*c*) an appellate division may have power to deny a petition for rehearing, reargument, or reconsideration of the decision, order, or requirement of an individual Commissioner or board of employees, and such a petition shall not automatically require reconsideration or rehearing by such appellate division; (*d*) an application for rehearing, reargument, or reconsideration, made before the decision, order, or requirement of a division, individual Commissioner, or board of employees becomes effective, shall not automatically stay such decision, order, or requirement; and (*e*) it shall not be necessary for a party dissatisfied with a decision emanating from the Commission to pursue all of the remedies for rehearing or reconsideration at the hands of the Commission before going into court. The reasons for this recommendation are stated above under the heading "Delegation of Authority."

2. We recommend that, with respect to the regulation of the sizes and weights of motor vehicles, legislation be enacted such as the Commission recommended specifically and in detail in its report to Congress on "Federal Regulation of the Sizes and Weight of Motor Vehicles," dated August 14, 1941, and printed as House Document No. 354, Seventy-seventh Congress, First Session.

3. We recommend that the Commission be given emergency powers with respect to service by motor carriers such as it has with respect to service by rail carriers. The reasons for this recommendation are stated above under the heading "Transportation and National Defense."

4. We recommend the enactment of House Bill No. 5598, introduced by Chairman Lea of the House Committee on Interstate and Foreign Commerce, to amend section 321 of the Transportation Act of 1940 with respect to the movement of Government traffic. The confusion

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incident to the present land-grant legislation is impeding desirable changes in rates and is bringing about transportation in some instances that appears to be highly uneconomic. The enactment of House Bill No. 5598 would correct these conditions.

JOSEPH B. EASTMAN, *Chairman.*
CLYDE B. AITCHISON.
CLAUDE R. PORTER.
WILLIAM E. LEE.
CHARLES D. MAHAFFIE.
CARROLL MILLER.
WALTER M. W. SPLAWN.
JOHN L. ROGERS.
J. HADEN ALLDREDGE.
WILLIAM J. PATTERSON.
J. MONROE JOHNSON.

APPENDIX A

SUMMARY OF INDICTMENTS RETURNED AND INFORMATIONS FILED IN THE UNITED STATES DISTRICT COURTS BETWEEN NOVEMBER 1, 1940, AND OCTOBER 31, 1941, INCLUSIVE, FOR VIOLATIONS OF THE INTERSTATE COMMERCE ACT, PART I, AND THE ELKINS AND BILLS OF LADING ACTS

United States v. *Alton Railroad Co.*, northern district of Illinois. July 16, 1941, indictment charging granting of concessions by making deliveries of advise shipments in advance of surrender of delivery order; 8 counts.

United States v. *Chester Anderson, Frank J. Cummer, and William D. Morgan*, district of Minnesota. March 1, 1941, indictment charging acceptance of concessions obtained through manipulation of transit privileges; 8 counts.

United States v. *Armour & Co.*, western district of Wisconsin. July 11, 1941, information charging acceptance of concessions obtained through payment of charges on basis of rate for double-deck car when two single-deck cars were used; 3 counts.

United States v. *Worth Beggs and William D. Morgan*, district of Minnesota. March 1, 1941, indictment charging acceptance of concessions obtained through manipulation of transit privileges on potatoes; 8 counts.

United States v. *C. G. Bianchi and W. A. Simonson*, northern district of California. September 8, 1941, indictment charging acceptance of concessions through furnishing false reports of weights; 20 counts.

United States v. *R. L. Boelter and William D. Morgan*, district of Minnesota. March 1, 1941, indictment charging acceptance of concessions obtained through manipulation of transit privileges on potatoes; 10 counts.

United States v. *Albert Broback and William D. Morgan*, district of Minnesota. March 1, 1941, indictment charging acceptance of concessions obtained through manipulation of transit privileges on potatoes; 10 counts.

United States v. *John Robert Burnett, Jr.*, district of Nebraska. April 7, 1941, information charging unlawful use of interstate pass; 1 count.

United States v. *Caddo-DeSoto Cotton Oil Co.*, western district of Louisiana. February 18, 1941, information charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used; 5 counts.

United States v. *Frank Carbone*, northern district of California. December 3, 1940, information charging solicitation of concessions by means of false claims; 4 counts.

United States v. *A. B. Casper Co. and William D. Morgan*, district of Minnesota. March 1, 1941, indictment charging receiving of concessions obtained through manipulation of transit privileges on potatoes; 8 counts.

United States v. *William Chesky*, northern district of Illinois. July 16, 1941, indictment charging soliciting and receiving concessions by obtaining delivery of advise shipments in advance of surrender of delivery order; 5 counts.

United States v. *Chicago, B. & Q. R. Co.*, northern district of Illinois. July 16, 1941, indictment charging granting of concessions by making deliveries of advise shipments in advance of surrender of delivery order; 8 counts.

United States v. *Chicago, B. & Q. R. Co.*, southern district of Illinois. March 25, 1941, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished; 3 counts.

United States v. *Chickasha Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used; 14 counts.

United States v. *Chickasha Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used; 9 counts.

United States v. *Philip Chinchiolo and R. E. Simonson*, northern district of California. September 8, 1941, indictment charging soliciting and receiving concessions, and conspiracy so to do, by means of furnishing false reports of weights; 31 counts.

United States v. *Choctaw Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 15 counts.

United States v. *Philip Coniglio and W. A. Simonson*, northern district of California. September 8, 1941, indictment charging soliciting and receiving concessions, and conspiracy so to do, obtained by means of furnishing false reports of weights; 33 counts.

United States v. *Connor Lumber & Land Co. and A. J. Ford*, eastern district of Wisconsin. October 3, 1941, indictment charging acceptance of concessions obtained by means of false description of freight; 26 counts.

United States v. *Consumers Cotton Oil Co.*, southern district of Texas. February 21, 1941, information charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 1 count.

United States v. *Cooper Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 6 counts.

United States v. *Angelo J. Costa and W. A. Simonson*, northern district of California. September 8, 1941, indictment charging soliciting and receiving concessions, and conspiracy so to do, by means of furnishing false reports of weights; 18 counts.

United States v. *Dixie-Portland Flour Co.*, eastern district of Virginia. August 7, 1941, information charging acceptance of concessions obtained through manipulation of transit privileges on flour; 1 count.

United States v. *Dubuque Packing Co.*, southern district of Georgia. May 27, 1941, information charging acceptance of concessions through false description of freight and furnishing false reports of weights; 10 counts.

United States v. *George F. Fish, Inc.*, northern district of California. December 4, 1940, indictment charging solicitation and acceptance of concessions by means of false claims; 9 counts.

United States v. *Fort Worth & D. C. Ry. Co.*, southern district of Texas. February 21, 1941, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that used; 2 counts.

United States v. *Furniture Manufacturers Assn.*, southern district of California. July 23, 1941, indictment charging acceptance of concessions obtained through payment of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually used; 5 counts.

United States v. *General Water Heater Corp.*, southern district of California. July 23, 1941, indictment charging acceptance of concessions obtained through payment of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually used; 10 counts.

United States v. *Gerstein & Co. and Louis A. Gerstein*, northern district of Illinois. July 16, 1941, indictment charging soliciting and receiving concessions by obtaining delivery of advise shipments in advance of surrender of delivery order; 10 counts.

United States v. *Gold & Post, Inc.*, eastern district of Wisconsin. February 4, 1941, indictment charging soliciting and receiving concessions by obtaining delivery of advise shipments in advance of surrender of delivery order; 9 counts.

United States v. *S. Goldsamt, Inc.*, northern district of California. December 3, 1940, information charging solicitation and acceptance of concessions by means of false claims; 14 counts.

United States v. *Martin J. Grogan*, western district of Louisiana. October 21, 1941, information charging acceptance of concessions from a private-car company in the form of payments by it to defendant, out of mileage allowances received from railroads, of amounts in excess of the rental paid by defendant for use of equipment leased from the private car company; 10 counts.

United States v. *Gulf, C. & S. F. Ry. Co.*, southern district of Texas. February 22, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 7 counts.

United States v. *Berryman Henwood, Trustee, St. Louis, S. W. Ry. Co. of Texas*, southern district of Texas. February 21, 1941, information charging

granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 2 counts.

United States v. *Roy Higgins, George L. Higgins, and William D. Morgan,* district of Minnesota. March 1, 1941, indictment charging soliciting and accepting concessions obtained through manipulation of transit privileges on potatoes; 7 counts.

United States v. *Illinois Central R. Co. and W. Haywood,* northern district of Illinois. July 16, 1941, indictment charging granting of concessions by making deliveries of advise shipments in advance of surrender of delivery order; 12 counts.

United States v. *Inland Car Lines, Inc.,* western district of Louisiana. October 21, 1941, information charging granting of concessions through payment to shippers, out of mileage allowances received from railroads, of amounts in excess of the rental paid by those shippers for use of equipment leased from defendant; 5 counts.

United States v. *Elmer Johnson and Harry A. Hopkins,* district of Minnesota. March 1, 1941, indictment charging acceptance of concessions obtained through manipulation of transit privileges on potatoes; 6 counts.

United States v. *Patrick H. Joyce and Luther M. Walter, Trustees, Chicago G. W. R. Co.,* district of Minnesota. March 1, 1941, indictment charging granting of concessions through failure to observe published tariffs; 25 counts.

United States v. *Justman & Co., Inc.,* northern district of California. December 4, 1940, indictment charging solicitation and acceptance of concessions obtained by means of false claims; 17 counts.

United States v. *J. M. Kurn and J. G. Lonsdale, Trustees, St. Louis-S. F. Ry. Co.,* southern district of Texas. January 14, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 3 counts.

United States v. *Vito Loconte and R. E. Simonson,* northern district of California. September 8, 1941, indictment charging soliciting and receiving concessions, and conspiracy so to do, by means of furnishing false reports of weights; 12 counts.

United States v. *Louisiana & A. Ry. Co.,* western district of Louisiana. February 18, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 5 counts.

United States v. *Frank O. Lowden et al., Trustees, Chicago, R. I. & P. Ry. Co.,* southern district of Texas. February 22, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 8 counts.

United States v. *Frank O. Lowden et al., Trustees, Chicago, R. I. & P. Ry. Co.,* southern district of Illinois. March 25, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 3 counts.

United States v. *Lubbock Cotton Oil Co.,* southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 8 counts.

United States v. *Miller-Gerow Co. Inc.,* northern district of California. December 3, 1940, information charging solicitation and acceptance of concessions obtained by means of false claims; 3 counts.

United States v. *Missouri-Kansas-Texas R. Co.,* southern district of Texas. February 22, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 2 counts.

United States v. *Missouri-Kansas-Texas R. Co. of Texas,* southern district of Texas. February 22, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 6 counts.

United States v. *North American Car Corporation,* western district of Louisiana, October 21, 1941, information charging granting of concessions through payment to shippers, out of mileage allowances received from railroads, of amounts in excess of the rental paid by those shippers for use of equipment leased from defendant; 6 counts.

United States v. *O. J. Odegard and William D. Morgan,* district of Minnesota. March 1, 1941, indictment charging acceptance of concessions obtained through manipulation of transit privileges on potatoes; 10 counts.

United States v. *O. J. Odegard, E. Bernier & Sons, Inc., and William D. Morgan,* district of Minnesota. March 1, 1941, indictment charging conspiracy to solicit concessions through manipulation of transit privileges on potatoes; 1 count.

United States v. *Pacific Electric Ry. Co.*, southern district of California, July 30, 1941, indictment charging the making of false entries in waybills; 10 counts.

United States v. *Pacific Electric Ry. Co.*, southern district of California. July 30, 1941, indictment charging granting concessions through collection of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually furnished; 10 counts.

United States v. *Pacific Fruit Express Co.*, northern district of Illinois, July 16, 1941, indictment charging granting of concessions through delivery of advise shipments in advance of surrender of delivery order; 8 counts.

United States v. *Panhandle & S. F. Ry. Co.*, southern district of Texas. February 22, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 1 count.

United States v. *Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers, Wabash Ry. Co., Sidney King and R. A. Walton,* northern district of Illinois. July 16, 1941, indictment charging granting of concessions through delivery of advise shipments in advance of surrender of delivery order; 15 counts.

United States v. *Purcell Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 7 counts.

United States v. *Rule-Jayton Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 5 counts.

United States v. *Rule-Jayton Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that furnished; 10 counts.

United States v. *Ryan Potato Co. and William D. Morgan,* district of Minnesota. March 1, 1941, indictment charging acceptance of concessions obtained through manipulation of transit privileges on potatoes; 10 counts.

United States v. *Henry A. Scandrett et al., Trustees, Chicago, M., St. P. & P. R. Co.*, southern district of Illinois. March 25, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 3 counts.

United States v. *Henry A. Scandrett et al., Trustees, C., M., St. P. & P. R. Co.*, western district of Wisconsin. July 11, 1941, information charging granting of concessions through collection of charges on basis of rate for transportation in double-deck car when two single-deck cars were furnished; 3 counts.

United States v. *William Shapiro, Inc.*, northern district of California. December 4, 1940, indictment charging solicitation and acceptance of concessions obtained by means of false claims; 10 counts.

United States v. *Southern Pac. Co.*, southern district of California. July 23, 1941, indictment charging granting of concessions through collection of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually used; 10 counts.

United States v. *Southern Pac. Co.*, southern district of California. July 23, 1941, indictment charging granting of concessions through collection of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually used; 12 counts.

United States v. *Southern Pac. Co.*, southern district of California. July 30, 1941, indictment charging the making of false entries in waybills; 100 counts.

United States v. *Southland Cotton Oil Co.*, western district of Louisiana. February 18, 1941, information charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 5 counts.

United States v. *Southland Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 10 counts.

United States v. *Southwestern Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 10 counts.

United States v. *W. Sherman Swain*, middle district of North Carolina. May 19, 1941, indictment charging forgery of bills of lading; 10 counts.

United States v. *Swift & Co.*, southern district of Texas. February 21, 1941, information charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 2 counts.

United States v. *Sweetwater Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 10 counts.

United States v. *Sweetwater Cotton Oil Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 5 counts.

United States v. *Terminal Oil Mill Co.*, southern district of Texas. March 6, 1941, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 10 counts.

United States v. *Texas & N. O. R. Co.*, western district of Louisiana. February 18, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 5 counts.

United States v. *Texas & N. O. R. Co.*, southern district of Texas. January 14, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 3 counts.

United States v. *Texas & P. Ry. Co.*, southern district of Texas. June 27, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 3 counts.

United States v. *Texas Electric Ry. Co.*, southern district of Texas. March 6, 1941, indictment charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 15 counts.

United States v. *Guy A. Thompson, Trustee, Missouri Pac. R. Co.*, western district of Arkansas. May 12, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 3 counts.

United States v. *Guy A. Thompson, Trustee, Missouri Pac. R. Co.*, northern district of Illinois. July 16, 1941, indictment charging granting of concessions through delivery of advise shipments in advance of surrender of delivery order; 10 counts.

United States v. *Union Pac. R. Co.*, southern district of California. July 23, 1941, indictment charging the making of false entries in waybills, and granting of concessions through collection of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually furnished; 10 counts.

United States v. *Patsy Ursini and R. E. Simonson*, northern district of California. September 8, 1941, indictment charging soliciting and receiving concessions, and conspiracy so to do, by means of furnishing false reports of weights; 17 counts.

United States v. *Samuel Visse*, northern district of Illinois. July 16, 1941, indictment charging soliciting and receiving concessions through obtaining delivery of advise shipments in advance of surrender of delivery order; 5 counts.

United States v. *James Benjamin Waybright*, northern district of West Virginia. March 19, 1941, indictment charging the making of a false bill of lading; 1 count.

United States v. *West Texas Cotton Oil Co.*, southern district of Texas. June 27, 1941, information charging acceptance of concessions through payment of charges based on minimum weight for a shorter car than that used; 2 counts.

United States v. *Wichita Falls & S. R. Co.*, southern district of Texas. February 26, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for a shorter car than that furnished; 2 counts.

United States v. *Wichita Falls Cotton Oil Co.*, southern district of Texas. February 27, 1941, information charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used; 2 counts.

United States v. *Wichita Valley Ry. Co.*, southern district of Texas. February 21, 1941, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished; 1 count.

United States v. *Yeckes-Eichenbaum, Inc.*, northern district of California. December 4, 1940, indictment charging solicitation and acceptance of concessions obtained by means of false claims; 15 counts.

SUMMARY OF CASES CONCLUDED IN UNITED STATES DISTRICT COURTS BETWEEN NOVEMBER 1, 1940, AND OCTOBER 31, 1941, INCLUSIVE, FOR VIOLATIONS OF THE INTERSTATE COMMERCE ACT, PART I, AND THE ELKINS AND BILLS OF LADING ACTS

United States v. *Alton Railroad Co.*, northern district of Illinois, indictment charging granting of concessions by making deliveries of advise shipments in advance of surrender of delivery order. October 17, 1941, plea of guilty entered and fine of $5,000 imposed.

United States v. *Aluminum Co. of America, Aluminum Ore Co., and Louisiana Terminal Co.*, eastern district of Louisiana, complaint seeking forfeiture of $1,500,000 representing three times the amount of rebate received through free and exclusive use of terminal facilities granted by Missouri Pacific Railroad Co., Texas & Pacific Railway Co., and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans. April 9, 1941, settlement effected by payment to United States of $125,000 and the filing with the court of a stipulation of dismissal.

United States v. *Armour & Co.*, western district of Wisconsin, information charging acceptance of concessions through payment of charges on basis of rate for double-deck car when two single-deck cars were used. July 11, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Buffalo Meat Products, Inc.*, western district of New York, indictment charging acceptance of concessions obtained by means of false billing. April 21, 1941, nolle prosequi entered.

United States v. *John Robert Burnett, Jr.*, district of Nebraska, information charging unlawful use of interstate pass. April 10, 1941, plea of guilty entered. April 18, 1941, defendant placed on probation for 1 year.

United States v. *Caddo-De Soto Cotton Oil Co.*, western district of Louisiana, information charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. February 18, 1941, plea of *nolo contendere* entered and fine of $1,000 imposed.

United States v. *Frank Carbone*, northern district of California, information charging the soliciting and receiving of concessions by means of false claims. December 3, 1940, plea of guilty entered and fine of $4,000 imposed.

United States v. *Chicago, B. & Q. R. Co.*, southern district of Illinois, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished. April 10, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Chicago, B. & Q. R. Co.*, northern district of Illinois, indictment charging granting of concessions by making deliveries of advise shipments in advance of surrender of delivery order. October 17, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Chickasha Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. April 7, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Chickasha Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. April 7, 1941, plea of guilty entered and fine of $1,000 imposed.

United States v. *Choctaw Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. April 19, 1941, plea of guilty entered and fine of $2,000 imposed.

United States v. *Consumers Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. February 21, 1941, plea of guilty entered and fine of $1,100 imposed.

United States v. *Cooper Cotton Oil Co.*, southern district of Texas, indictment charging receiving concessions through payment of charges on basis of minimum weight for shorter car than that used. April 7, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Dixie-Portland Flour Co.*, eastern district of Virginia, information charging the soliciting and receiving of concessions through manipulation of transit privileges. September 16, 1941, plea of guilty entered and fine of $1,000 imposed.

United States v. *Dubuque Packing Co.*, southern district of Georgia, information charging acceptance of concessions obtained by means of false description of freight and furnishing false reports of weights. May 27, 1941, plea of guilty entered and fine of $10,000 imposed.

United States v. *Feed Products Corporation*, western district of New York, indictment charging acceptance of concessions obtained by means of false billing. April 21, 1941, nolle prosequi entered.

United States v. *Fort Worth & D. C. Ry. Co.*, southern district of Texas, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished. February 21, 1941, plea of guilty entered and fine of $2,200 imposed.

United States v. *Furniture Manufacturers Assn.*, southern district of California, indictment charging acceptance of concessions through payment of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually used. September 22, 1941, plea of *nolo contendere* entered and fine of $3,500 imposed.

United States v. *General Water Heater Corporation*, southern district of California, indictment charging acceptance of concessions through payment of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually used. September 22, 1941, plea of *nolo contendere* entered and fine of $3,500 imposed.

United States v. *Gold & Post, Inc.*, eastern district of Wisconsin, indictment charging acceptance of concessions by obtaining delivery of advise shipments in advance of surrender of delivery order. June 9, 1941, plea of guilty entered and fine of $1,000 imposed.

United States v. *S. Goldsamt, Inc.*, northern district of California, information charging acceptance of concessions obtained by means of false claims. December 3, 1940, plea of guilty entered and fine of $14,000 imposed.

United States v. *Martin J. Grogan*, western district of Louisiana, information charging acceptance of concessions from a private-car company in the form of payments by it to defendant, out of mileage allowances received from railroads, of amounts in excess of the rental paid by defendant for use of equipment leased from the private car company. October 21, 1941, plea of guilty entered and fine of $10,000 paid.

United States v. *Gulf, C. & S. F. Ry. Co.*, southern district of Texas, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished. February 22, 1941, plea of guilty entered and fine of $7,700 imposed.

United States v. *Berryman Henwood, Trustee, St. Louis S. W. Ry. Co. of Texas*, southern district of Texas, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished. February 21, 1941, plea of guilty entered and fine of $2,200 imposed.

United States v. *Inland Car Lines, Inc.*, western district of Louisiana, information charging granting of concessions through payment to shippers, out of mileage allowances received from railroads, of amounts in excess of the rental paid by those shippers for use of equipment leased from defendant. October 21, 1941, plea of guilty entered and fine of $5,000 imposed.

United States v. *Patrick H. Joyce and Luther M. Walter, Trustees, Chicago G. W. R. Co.*, district of Minnesota, indictment charging granting of concessions. March 22, 1941, nolle prosequi entered.

United States v. *Justman & Co., Inc.*, northern district of California, information charging soliciting and receiving concessions obtained by means of filing false claims. July 3, 1941, verdict of guilty rendered and fine of $21,000 imposed.

United States v. *J. M. Kurn and John G. Lonsdale, Trustees, St. Louis-S. F. Ry. Co.*, southern district of Texas, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. January 15, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Louisiana & A. Ry. Co.*, western district of Louisiana, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. February 18, 1941, plea of guilty entered and fine of $5,000 imposed.

United States v. *Frank O. Lowden et al., Trustees, Chicago, R. I. & P. Ry. Co.*, southern district of Texas, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. February 22, 1941, plea of guilty entered and fine of $8,800 imposed.

United States v. *Frank O. Lowden et al., Trustees, Chicago, R. I. & P. Ry. Co.*, southern district of Illinois, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. April 10, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Lubbock Cotton Oil Co.*, southern district of Texas, indictment charging granting of concessions through payment of charges based on minimum weight for shorter car than that used. April 7, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Miller-Gerow Co., Inc.*, northern district of California, information charging soliciting and receiving of concessions obtained by means of false claims. December 3, 1940, plea of guilty entered and fine of $3,000 imposed.

United States v. *Missouri-Kansas-Texas R. Co.*, southern district of Texas, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. February 22, 1941, plea of guilty entered and fine of $2,200 imposed.

United States v. *Missouri-Kansas-Texas R. Co. of Texas*, southern district of Texas, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. February 22, 1941, plea of guilty entered and fine of $6,600 imposed.

United States v. *National Felt Works, Inc., Nicholas N. Goldman, and George J. Goldman*, northern district of Illinois, indictment charging acceptance of concessions obtained by means of false description of freight. June 18, 1941, pleas of guilty entered and fines of $1,000 upon the corporation, and of $1.00 upon each individual, imposed.

United States v. *North American Car Corporation*, western district of Louisiana, information charging granting of concessions through payment to shippers, out of mileage allowances received from railroads, of amounts in excess of the rental paid by those shippers for use of equipment leased from defendant. October 21, 1941, plea of guilty entered and fine of $20,000 imposed.

United States v. *Pacific Electric R. Co.*, southern district of California, indictment charging granting of concessions through collection of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually furnished. September 22, 1941, plea of *nolo contendere* entered and fine of $5,000 imposed.

United States v. *Pacific Electric Ry. Co.*, southern district of California, indictment charging the making of false entries in waybills. September 22, 1941, pea of *nolo contendere* entered and fine of $2,000 imposed.

United States v. *Panhandle & S. F. Ry Co.*, southern district of Texas, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. February 22, 1941, plea of guilty entered and fine of $1,100 imposed.

United States v. *Purcell Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. April 7, 1941, plea of guilty entered and fine of $1,000 imposed.

United States v. *Rule-Jayton Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. April 5, 1941, plea of guilty entered and fine of $1,000 imposed.

United States v. *Rule-Jayton Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. April 5, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Henry A. Scandrett et al., Trustees, Chicago, M., St. P. & P. R. Co.*, southern district of Illinois, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. April 10, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Henry A. Scandrett et al., Trustees, Chicago, M., St. P. & P. R. Co.*, western district of Wisconsin, information charging granting of concessions through collection of charges on basis of rate for double-deck car when two single-deck cars were furnished. July 11, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Southern Pac. Co.*, southern district of California, indictment charging granting of concessions through collection of charges on basis

of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually furnished. September 22, 1941, plea of *nolo contendere* entered and fine of $5,000 imposed.

United States v. *Southern Pac. Co.*, southern district of California, indictment charging granting of concessions through collection of charges on basis of minimum weight provided for one long car instead of on basis of minimum weights provided for two shorter cars actually furnished. September 22, 1941, plea of *nolo contendere* entered and fine of $8,000 imposed.

United States v. *Southern Pac. Co.*, southern district of California, indictment charging the making of false entries in waybills. September 22, 1941, plea of *nolo contendere* entered and fine of $15,000 imposed.

United States v. *Southland Cotton Oil Co.*, western district of Louisiana, information charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used. February 18, 1941, plea of *nolo contendere* entered and fine of $1,000 imposed.

United States v. *Southland Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used. April 7, 1941, plea of guilty entered and fine of $2,000 imposed.

United States v. *Southwestern Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used. April 7, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Sweetwater Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used. April 5, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Sweetwater Cotton Oil Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used. April 5, 1941, plea of guilty entered and fine of $2,000 imposed.

United States v. *Swift & Co.*, southern district of Texas, information charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used. February 21, 1941, plea of guilty entered and fine of $2,200 imposed.

United States v. *Terminal Oil Mill Co.*, southern district of Texas, indictment charging acceptance of concessions through payment of charges based on minimum weight for shorter car than that used. April 7, 1941, plea of guilty entered and fine of $2,000 imposed.

United States v. *Texas & N. O. R. Co.*, southern district of Texas, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. January 15, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Texas & N. O. R. Co.*, western district of Louisiana, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. February 18, 1941, plea of guilty entered and fine of $5,000 imposed.

United States v. *Texas & P. R. Co.*, southern district of Texas, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. June 27, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Texas Electric R. Co.*, southern district of Texas, indictment charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. March 25, 1941, plea of guilty entered and fine of $2,000 imposed.

United States v. *Guy A. Thompson, Trustee, Missouri Pac. R. Co.*, western district of Arkansas, information charging granting of concessions through collection of charges based on minimum weight for shorter car than that furnished. May 12, 1941, plea of guilty entered and fine of $3,000 imposed.

United States v. *Guy A. Thompson, Trustee, Missouri Pac. R. Co.*, northern district of Illinois, indictment charging granting of concessions by making deliveries of advise shipments in advance of surrender of delivery order. October 17, 1941, plea of guilty entered and fine of $4,000 imposed.

United States v. *Union Pac. R. Co.*, southern district of California, indictment charging the making of false entries in waybills, and granting of concessions through collection of charges on basis of minimum weight provided for one long

car instead of on basis of minimum weights provided for two shorter cars actually furnished. September 16, 1941, plea of *nolo contendere* entered and fine of $7,000 imposed.

United States v. *Valley Meat Co. and J. W. Johnson*, northern district of California, indictment charging acceptance of concessions obtained by furnishing false reports of weights. December 13, 1940, plea of guilty entered on behalf of corporate defendant and fine of $1,000 imposed. Nolle prosequi entered as to individual defendant.

United States v. *James Benjamin Waybright*, northern district of West Virginia, indictment charging the making and uttering of a false bill of lading. April 24, 1941, plea of guilty entered and defendant placed on probation for 3 years.

United States v. *West Texas Cotton Oil Co.*, southern district of Texas, information charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. June 27, 1941, plea of guilty entered and fine of $2,000 imposed.

United States v. *Wichita Falls & S. R. Co.*, southern district of Texas, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished. February 26, 1941, plea of guilty entered and fine of $2,000 imposed.

United States & Wichita Falls Cotton Oil Co., southern district of Texas, information charging acceptance of concessions through payment of charges on basis of minimum weight for shorter car than that used. February 27, 1941, plea of guilty entered and fine of $2,000 imposed.

United States v. *Wichita Valley R. Co.*, southern district of Texas, information charging granting of concessions through collection of charges on basis of minimum weight for shorter car than that furnished. February 21, 1941, plea of guilty entered and fine of $1,100 imposed.

APPENDIX B

SUMMARIES SHOWING ACTION TAKEN SINCE THE PERIOD COVERED BY THE LAST ANNUAL REPORT WITH RESPECT TO CASES INVOLVING ORDERS AND REQUIREMENTS OF THE COMMISSION AND STATUS ON OCTOBER 31, 1941, OF CASES PENDING IN THE COURTS

Cases Decided by the Courts Since October 31, 1940

SUPREME COURT OF THE UNITED STATES

Consolidated Rock Products Co. v. *DuBois.*

Badgeley v. *DuBois.*

For case history see 1940 Annual Report, page 144. On March 3, 1941, the plan of reorganization was held invalid (312 U. S. 510).

Scandrett et al., Trustees, Chicago, M., St. P. & P. R. Co. v. *United States.*

For case history see 1940 Annual Report, page 142. On March 10, 1941, the opinion of the district court was affirmed and the Commission's order sustained (312 U. S. 661).

Mitchell v. *United States.*

For prior case history see 1939 Annual Report, page 150, and 1940 Annual Report, page 143. On November 18, 1940, the appeal was docketed in the Supreme Court, and on April 28, 1941, the opinion of the district court was reversed, and the case remanded to the Commission for further proceedings (313 U. S. 80).

Hudson & M. R. Co. v. *United States.*

For prior case history see 1939 Annual Report, page 150, and 1940 Annual Report, page 143. On December 13, 1940, the appeal was docketed in the Supreme Court, and on April 28, 1941, the opinion of the district court was affirmed and the Commission's order sustained (313 U. S. 98).

City of Kansas City v. *United States.*

On appeal from an order of the United States District Court for the Western District of Missouri, holding that appellants had violated the Elkins Act in offering or receiving concessions to induce produce dealers to remove their places of business from Kansas City, Mo., to Kansas City, Kans. On December 29, 1939, petition for a temporary restraining order was filed and the restraining order granted. On March 25, 1940, the court granted a preliminary injunction (32 Fed. Supp. 917), and on July 13, 1940, the injunction was made permanent (34 Fed. Supp. 4). On November 23, 1940, the appellants docketed their appeal in the Supreme Court, and on June 28, 1941, the contention of the United States was sustained (313 U. S. 450).

CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

Sprague, Receiver, Chicago, N. S. & M. R. Co. v. *Woll, U. S. Attorney.*

For prior case history see 1939 Annual Report, page 151, and 1940 Annual Report, page 145. On November 18, 1940, the Commission's determination was sustained by the district court, and on February 15, 1941, the case was appealed to the Circuit Court of Appeals, Seventh Circuit. On July 22, 1941, the judgment of the district court was affirmed and on September 8, 1941, petition for writ of certiorari was filed in the Supreme Court, which was denied on October 20, 1941.

Chicago, M., St. P. & P. R. Co. v. *Group of Institutional Investors.*

This was a suit to restrain two groups of security holders from casting their votes in acceptance of the plan of reorganization of the Milwaukee, approved by the district court, until said plan is modified by eliminating therefrom the provisions relating to a voting trust under which said groups, or either of

them, are given the right to nominate one or more trustees. On February 5, 1941, the petition was filed and on February 18, the court entered an order, without notice, staying submission of the plan by the Interstate Commerce Commission to the creditors, until determination of the appeal. A motion made by the Commission to dissolve the stay was denied by the court on June 18, 1941, without prejudice to renewal at the time of hearing the case on the merits.

Chicago & N. W. Ry. Co. v. *Life Insurance Group Committee.*

These were appeals from order of the district court approving the Commission's plan of reorganization for the Chicago & North Western Railway Co. On April 3, 1941, the debtor filed a petition seeking a stay of submission of the plan of reorganization to the creditors. The application for a stay was denied by the court on April 11, 1941, and the decision of the district court, approving the plan of reorganization, was reversed on June 20, 1941. On June 23, 1941, the Reconstruction Finance Corporation filed a petition for rehearing which was supported by the Interstate Commerce Commission, which petition for rehearing was denied on June 30, 1941.

Chicago & N. W. Ry. Co. v. *Mutual Savings Bank Group Committee.*

On July 28, 1941, the Interstate Commerce Commission filed a motion for leave to file brief in opposition to consolidation of the appeals in this case, growing out of the plan of reorganization for the North Western. On August 5, 1941, the court entered an order consolidating the appeals.

DISTRICT COURTS OF THE UNITED STATES

Sprague, Receiver, Chicago N. S. & M. R. Co. v. *Woll, U. S. Attorney*, northern district of Illinois.

For case history see page 153, this volume.

Inland Motor Freight and Star Dray & Transfer Co. v. *United States*, district of Idaho.

For case history see page 157, this volume.

N. E. Rosenblum Truck Lines, Inc. v. *United States*, eastern district of Missouri.

For case history see 1940 Annual Report, page 146. On January 14, 1941, a permanent injunction was granted (36 Fed. Supp. 467), and on April 21, 1941, the case was docketed on appeal to the Supreme Court.

J. B. Margolies dba Manhattan Truck Lines v. *United States*, eastern district of Missouri.

For case history see 1940 Annual Report, page 146. On January 14, 1941, a permanent injunction was granted (36 Fed. Supp. 467), and on April 21, 1941, the case was docketed on appeal to the Supreme Court.

Board of Trade of Kansas City, Mo., v. *United States*, western district of Missouri.

For case history see 1940 Annual Report, page 145. On January 21, 1941, the Commission's order was sustained (36 Fed. Supp. 865), and on June 7, 1941, the case was docketed on appeal to the Supreme Court.

Alton R. Co. v. *United States*, eastern district of Michigan.

For case history see 1939 Annual Report, page 139, and 1940 Annual Report, page 145. On January 31, 1941, the Commission's order was sustained, except as to Arkansas (36 Fed. Supp. 898), and on May 29, 1941, the case was docketed on appeal to the Supreme Court.

Standard Steel Works v. *Chicago, A. & E. R. Co.*

City Nat'l. Bank & Trust Co. of Chicago, Trustee, v. *Chicago, A. & E. R. Co. and Albert A. Sprague, Receiver*, northern district of Illinois.

For case history see 1940 Annual Report, page 145. On February 13, 1941, the Commission's determination was sustained, and on April 21, 1941, the case was docketed on appeal to the Circuit Court of Appeals, Seventh Circuit.

Gregg Cartage & Storage Co. v. *United States*, northern district of Ohio.

For case history see 1940 Annual Report, page 145. On February 28, 1941, the Commission's order was affirmed and on August 21, 1941, the case was docketed on appeal to the Supreme Court.

Sunset Trail Exp., Inc. v. *United States*, western district of Oklahoma.

For case history see page 157, this volume.

Railway Labor Executives Assn. v. *United States*, District of Columbia.

Suit to set aside Commission's order in Finance Docket No. 12643 (242 I. C. C. 9), permitting the Pacific Electric Ry. Co. to abandon certain of its lines in California, insofar as the Commission's order declines to consider conditions to benefit carrier employees adversely affected by the abandonment. On Novem-

ber 8, 1940, the complaint was filed, and on March 6, 1941, the Commission's order was held erroneous insofar as it disclaims authority to impose the conditions sought (38 Fed. Supp. 818). On June 28, 1941, the case was docketed on appeal to the Supreme Court.

Carolina Freight Carriers Corp. v. *United States*, western district of North Carolina.

Suit to set aside Commission's order of July 10, 1940, in Docket No. MC–2553 (24 M. C. C. 305), wherein the Commission found that applicant was entitled to a "grandfather" certificate as to specified commodities between specified interstate points over irregular routes, but denied a certificate as to general commodities. On November 26, 1941, the complaint was filed, and on April 5, 1941, the Commission's order was set aside (38 Fed. Supp. 549). On June 20, 1941, the case was docketed on appeal to the Supreme Court.

J. T. O'Malley, dba Northwestern Forwarding Co. v. *United States*, district of Minnesota.

Suit to set aside Commission's order of May 18, 1940, in Docket No. MC–7230 (23 M. C. C. 276), denying application for certificate and permit and a broker's license. On December 10, 1940, the petition was filed, and on April 17, 1941, the complaint was dismissed by the court (38 Fed. Supp. 1).

Howard Hall Co., Inc. v. *United States*, northern district of Alabama.

Suit to set aside Commission's order of July 10, 1940, in Docket No. MC–42318 (24 M. C. C. 273), insofar as the order denies in part the application for a "grandfather" certificate. On February 28, 1941, the petition was filed, and on April 17, 1941, the Commission's order was sustained and the complaint dismissed (38 Fed. Supp. 556). On June 26, 1941, the case was docketed on appeal to the Supreme Court.

Ready Truck Lines, Inc. v. *United States*, northern district of Illinois.

Suit to set aside Commission's order of September 30, 1940, in Docket No. MC–28005 (26 M. C. C. 213), denying petitioner's application for a permit as a contract carrier by motor vehicle under the "grandfather" clause of section 209 (a). On January 30, 1941, the petition was filed, and on May 2, 1941, the complaint was dismissed for want of equity. On July 7, 1941, the case was docketed on appeal to the Supreme Court.

Swift & Co. v. *United States*, northern district of Illinois.

For case history see 1940 Annual Report, page 146. On June 4, 1941, the court entered an order dismissing the suit, and on September 9, 1941, the case was docketed on appeal to the Supreme Court.

Pete Lubetich, dba Pacific Refrigerator Motor Line v. *United States*, western district of Washington.

Suit to set aside Commission's order in Docket No. MC–34383 (24 M. C. C. 141), wherein the Commission denied "grandfather" certificate to Lubetich; further involves Commission's refusal to postpone effective date until determination of applicant's BMC–8 application. On January 8, 1941, the petition was filed, and on June 10, 1941, the Commission's order was sustained (39 Fed. Supp. 780). On July 30, 1941, the case was docketed on appeal to the Supreme Court.

Los Angeles-Seattle Motor Express, Inc. v. *United States*, western district of Washington.

Suit to set aside Commission's order in Docket No. MC–68618 (24 M. C. C. 141), denying "grandfather" certificate. On January 29, 1941, the complaint was filed, and on June 10, 1941, the Commission's order was sustained (39 Fed. Supp. 783).

Chicago & N. W. Ry. Co. v. *United States*, northern district of Illinois.

Suit to set aside Commission's orders of January 15, 1941, and March 11, 1941, denying a petition of the debtor to fix maximum limits to be paid out of the debtor's estate for expenses in connection with appeals from the orders of the district court approving the plan of reorganization, and denying the debtor's motion to refer the proceedings back to the Commission. On April 3, 1941, the petition was filed, and on May 29, 1941, the court entered an order dismissing the suit.

A. W. Hoerman v. *United States*, western district of Missouri.

For case history see page 158, this volume.

Florence E. Meyer dba Meyer Transport Co. v. *United States*, northern district of Illinois.

For case history see 1940 Annual Report, page 146. On June 26, 1941, the injunction was denied and the complaint dismissed for want of equity.

Benjamin E. Grove v. *United States*, middle district of Pennsylvania.

Suit to set aside the Commission's order of December 9, 1940, in Docket No. MC–93384, denying application for a certificate as a common carrier by motor vehicle.

On May 29, 1941, the complaint was filed, and on September 4, 1941, the court rendered an opinion sustaining the Commission's order. (40 Fed. Supp. 503.)

Woodruff v. *United States*, district of Connecticut.

This was a suit by plaintiff, a patron of the New Haven's Orange, Conn., branch line, to set aside the Commission's order of May 26, 1941, authorizing abandonment of the line between Orange and Derby Junction, Conn., Finance Docket No. 11823 (228 I. C. C. 117). On July 1, 1941, the petition was filed, and on August 29, 1941, the Commission's order was sustained. (40 Fed. Supp. 949.)

In the Matter of St. Louis-S. F. Ry. Co., debtor, eastern district of Missouri, eastern division.

This case involved a petition of the Bankers' Trust Company to fix maximum expense and compensation for motortrucks, notwithstanding the provisions of section 77 (c) (12) of the Bankruptcy Act. On July 1, 1941, the court entered an order allowing the petition and directing payment of the claim involved. Subsequent thereto, an appeal to the Circuit Court of Appeals of the Eighth Circuit was allowed the Reconstruction Finance Corporation.

In the Matter of Fort Dodge, D. M. & I. R. Co., debtor, southern district of Iowa, central division.

On July 1, 1941, the New York Trust Company filed a petition in this case for the allowance of its fees and expenses. On August 15, 1941, the Commission was allowed leave to intervene and be heard in opposition to the petition and on September 9, 1941, the case was argued on the question of the court's jurisdiction to allow the claim of the New York Trust Company for trustees' expenses. An order was entered dismissing the special appearance of the New York trustee and affirming reference of its claim to the Commission.

Swedesboro Transp. Co. v. *United States*, district of New Jersey.

For case history see page 160 this volume.

On October 17, 1941, the Commission's order was annulled and set aside.

Fordham Bus Corp. v. *United States*, southern district of New York.

For case history see page 160 this volume.

On October 27, 1941, the Commission's order was sustained and the bill dismissed.

Ray C. Kline dba Independent Truckers Assn. v. *United States*, district of Nebraska.

For case history see page 160 this volume.

On October 30, 1941, the Commission's order was set aside.

Northern Pac. Ry. Co. v. *United States*, district of Minnesota.

For case history see page 161 this volume.

On October 31, 1941, the Commission's order was sustained.

Public Service Commission of Maryland v. *United States*, district of Maryland.

For case history see page 162 this volume.

On October 13, 1941, the complaint was dismissed and injunction denied.

Laubach Transp. Co. v. *United States*, district of New Jersey.

For case history see page 161 this volume.

On October 15, 1941, the case was dismissed by the court for want of jurisdiction.

Cases Discontinued

CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

In the Matter of the Application of T. W. Crooks, dba Sedan Stages, for a "Grandfather" Certificate, etc.

For case history see 1940 Annual Report, page 144. On January 14, 1941, the court entered an order striking the case from the files.

DISTRICT COURTS OF THE UNITED STATES

Horton Motor Lines v. *United States*, western district of North Carolina.

For prior case history see 1939 Annual Report, page 151, and 1940 Annual Report page 145. On November 27, 1940, the court dismissed the case on authority of decision of Supreme Court in *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534.

Rayburn, dba Houston Inland Forwarding Co. v. *United States*, southern district of Texas.

For case history see 1940 Annual Report, page 143. On December 5, 1940, the case was discontinued because not appealed within the time prescribed by law.

A. E. McDonald Motor Freight Lines, Inc., v. *United States*, southern district of Texas.

For case history see 1940 Annual Report, page 143. On December 5, 1940, the case was discontinued because not appealed within the time prescribed by law.

Gulf Coast Motor Freight Lines v. *United States*, southern district of Texas.

For case history see 1940 Annual Report, page 143. On December 5, 1940, the case was discontinued because not appealed within the time prescribed by law.

Bates v. *United States*, southern district of Texas.

For case history see 1940 Annual Report, page 143. On December 5, 1940, the case was discontinued because not appealed within the time prescribed by law.

W. H. Williams Freight Lines, Inc., v. *United States*, southern district of Texas.

For case history see 1940 Annual Report, page 143. On December 5, 1940, the case was discontinued because not appealed within the time prescribed by law.

Keele v. *United States*, southern district of Texas.

For case history see 1940 Annual Report, page 143. On December 5, 1940, the case was discontinued because not appealed within the time prescribed by law.

Consolidated Freightways, Inc., v. *United States*, district of Utah.

For case history see 1940 Annual Report, page 143. On January 15, 1941, the case was discontinued because not appealed within the time prescribed by law.

Lindley dba The Lindley Trucking Co. v. *United States*, western district of Arkansas.

For case history see 1940 Annual Report, page 145. On April 16, 1941, the case was dismissed by the court on plantiff's motion.

Inland Motor Freight and Star Dray & Transfer Co. v. *United States*, district of Idaho.

For case history see 1940 Annual Report, page 146. On January 4, 1941, the Commission's order was sustained (36 Fed. Supp. 885), and on April 18, 1941, the case was discontinued because not appealed within the time prescribed by law.

In the Matter of Ideal Motors, Inc., Alleged Bankruptcy, western district of Illinois.

Petition of Ben Gold, receiver, to referee in bankruptcy, for order enjoining the Commission from interfering with or curtailing operation by Ben Gold of the business of Ideal Motors, notwithstanding the Commission's denial of the bankrupt's application for a "grandfather" certificate, On October 21, 1940, the petition was filed, and on October 22, 1940, a purported injunction was issued by the referee. On May 1, 1941, the case was discontinued, time for injunction having expired and no suit having been filed.

Interstate Van Lines, Inc., v. *United States*, southern district of New York.

For case history see 1940 Annual Report, page 146. On November 7, 1940, the case was dismissed by the court on stipulation of the parties.

Sunset Trail Exp., Inc., v. *United States*, western district of Oklahoma.

For case history see 1940 Annual Report, page 146. On March 13, 1941, the Commission's order was sustained, and on June 14, 1941, the case was discontinued because not appealed within the time prescribed by law.

Silver Dart Lines, Inc., v. *United States*, District of Columbia.

Suit to set aside Commission's order of June 4, 1941, in Docket No. MC–F–1546, *Quaker City Bus Co.—Purchase—Blackhawk Lines*, granting Quaker City Bus Co. temporary authority to operate between Boston and New York for 180 days pending determination by the Commission of Quaker City's application to purchase any operating rights Blackhawk Lines, Inc., might have. On June 6, 1941, the petition was filed, and on July 10, 1941, the case was dismissed by the court on stipulation of the parties.

H. & W. Motor Exp. Co. v. *Interstate Commerce Commission*, northern district of Iowa.

Suit to set aside Commission's order of November 27, 1939, in Docket No. MC–F–902 (25 M. C. C. 749), authorizing the Gateway City Transfer Co. to

purchase certain operating rights of Janesville Rowald Motor Transport, Inc. On April 22, 1941, the complaint was filed, and on June 24, 1941, the case was dismissed on plaintiff's motion, without prejudice.

A. W. Hoerman v. *United States*, western district of Missouri.

Suit to set aside Commission's order of November 29, 1940, in Docket No. MC–23582 (26 M. C. C. 706), wherein the Commission denied to applicant a certificate or permit as a common or contract carrier by motor vehicle of general or special commodities between points in Kansas, Missouri, Oklahoma, Colorado, Iowa, and Nebraska, over regular and irregular routes, under the "grandfather" clause. On April 11, 1941, the complaint was filed, and on June 5, 1941, the court entered an order dismissing the bill. On August 6, 1941, the case was discontinued because not appealed within the time prescribed by law.

Nix & Co. v. *United States*, southern district of New York.

Suit to set aside the Commission's order in Docket No. 27002, (215 I. C. C. 514, 238 I. C. C. 60), holding that it had no authority to award reparation in favor of plaintiffs because the carriers had already paid to the complainants under an earlier order of the Commission. On November 15, 1940, the bill of complaint was filed, and on January 6, 1940, the Commission reopened the proceeding. On January 21, 1941, the case was discontinued by the district court without prejudice.

Yellow Cab Transit Co. v. *United States*, western district of Oklahoma.

For case history see 1939 Annual Report, page 150. On September 17, 1941, this proceeding was dismissed on plaintiff's motion.

J. T. O'Malley, dba Northwestern Forwarding Co. v. *United States*, district of Minnesota.

For case history see page 155, this volume. On September 2, 1941, the case was dismissed because not appealed within the time prescribed by law.

Los Angeles-Seattle Motor Express, Inc. v. *United States*, western district of Washington.

For case history see page 155, this volume.

On October 1, 1941, the case was discontinued because not appealed within the time prescribed by law.

Cases Pending

SUPREME COURT OF THE UNITED STATES

Alton R. Co. v. *United States.*
For case history see page 154, this volume.
Board of Trade of Kansas City, Mo., v. *United States.*
For case history see page 154, this volume.
United States v. *N. E. Rosenblum Truck Lines, Inc.*
For case history see page 154, this volume.
United States v. *J. B. Margolies dba Manhattan Truck Lines.*
For case history see page 154, this volume.
Interstate Commerce Comm. v. *Railway Labor Executives Assn.*
For case history see page 154, this volume.
United States v. *Carolina Freight Carriers Corp.*
For case history see page 155, this volume.
Ready Truck Lines, Inc. v. *United States.*
For case history see page 155, this volume.
Howard Hall Co., Inc. v. *United States.*
For case history see page 155, this volume.
Gregg Cartage & Storage Co. v. *United States.*
For case history see page 154, this volume.
Swift & Co. v. *United States.*
For case history see page 155, this volume.
Pete Lubetich, dba Pacific Refrigerator Motor Lines, v. *United States.*
For case history see page 155, this volume.

CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

Standard Steel Works v. *Chicago, A. & E. R. Co.*
For case history see page 154, this volume.
Chicago, M., St. P. & P. R. Co. v. *Group of Institutional Investors.*
For case history see page 153, this volume.
In the Matter of Chicago & N. W. Ry. Co. Debtor.

This was a petition by the North Western, debtor, for an order directing the Commission to fix the maximum limits of allowances to be paid out of

the debtor's estate for its expenses in connection with its appeals on the district court's order of October 12, 1940, approving the plan of reorganization, and denying debtor's motion to refer the plan back to the Commission.

On March 26, 1941, the petition was served on the Commission, and on March 31, 1941, the debtor's petition was denied. On April 2, 1941, an appeal was taken to the Circuit Court of Appeals for the Seventh Circuit, and on June 9, 1941, the Commission filed an answer to motion of appellant to stay confirmation proceedings.

Chicago & N. W. Ry. Co. v. *Life Insurance Group Committee.*

For prior case history see page 154, this volume.

Chicago & N. W. Ry. Co. v. *Mutual Savings Bank Group Committee.*

For case history see p. 154, this volume.

DISTRICT COURTS OF THE UNITED STATES

City of Jersey City v. *United States*, district of New Jersey.

For case history see 1938 Annual Report, page 136, and 1940 Annual Report, page 144.

Interstate Commerce Commission v. *Youngstown & S. Ry. Co.*, northern district of Ohio.

For case history see 1939 Annual Report, page 150, and 1940 Annual Report, page 145.

Gill dba Gill Transport Co. v. *United States*, eastern district of Arkansas.

For case history see 1939 Annual Report, page 150, and 1940 Annual Report, page 145.

Meyer dba Meyer Transport Co. v. *United States*, district of Illinois.

For case history see page 155, this volume.

Wilson & Co., Inc. v. *United States*, northern district of Illinois.

Suit to set aside Commission's order of October 1, 1940, in Docket No. 20769 (241 I. C. C. 503), insofar as it requires the carriers to publish and file with the Commission tariffs or schedules of rates and refrigeration charges. On November 7, 1940, the complaint was filed. On November 15, 1940, the Commission's order reopening the proceeding was entered, also postponing effective date of its previous order dated October 1, 1940, "until the further order of the Commission." On December 6, 1940, the court entered an order extending time for filing of answers to and including 30 days from date of the "further order of the Commission."

J. E. Johnson v. *United States*, district of Oregon.

Suit to set aside Commission's order denying "grandfather" application in Docket No. MC–8522 (24 M. C. C. 141). On November 12, 1940, the complaint was filed, and on April 17, 1941, the case was argued and submitted for decision.

Inland Motor Freight v. *United States*, eastern district of Washington.

Suit to set aside Commission's order in Docket No. MC–18209 (24 M. C. C. 41), wherein the Commission granted a certificate of convenience and necessity to Tocco upon a late "grandfather" application upon the ground that long-continued operation afforded evidence of public convenience and necessity.

Sprague, Receiver, Chicago N. S. & M. R. Co. v. *Woll, U. S. attorney*, northern district of Illinois.

For prior case history see 1939 Annual Report, page 151, and 1940 Annual Report, page 145.

On March 27, 1940, the Commission's determination was sustained. Case now pending determination by district court as to amount of tax due by the carrier.

On December 24, 1940, the petition was filed. On June 13, 1941, a stipulation was filed by the parties, for the holding in abeyance of the case until the reopened proceeding before the Commission shall have been disposed of.

Riss & Co., Inc. v. *United States*, northern district of Oklahoma.

Suit to set aside the Commission's order of April 6, 1940, in Docket No. MC–59874 (22 M. C. C. 541, 35 M. C. C. 383), denying application of Sooner Distributing Company for a certificate or permit under the "grandfather" clause of sections 206 (a) and 209 (a), and to set aside the Commission's order in MC–F–422, dismissing application of petitioner for authority to purchase the operating rights of Sooner Distributing Company. On February 7, 1941, the complaint was filed, and in March 1941 the Commission's answer was filed.

Chicago & N. W. Ry. Co. v. *United States*, northern district of Illinois, eastern division.

For prior case history see page 155, this volume.

Swedesboro Transp. Co. v. *United States*, district of New Jersey.

Suit to set aside the Commission's order of December 13, 1940, insofar as it denied to Hunter Motor Freight, Inc., predecessor in interest, a permit as a contract carrier to transport canned goods, etc., Docket No. MC–8298, *Hunter Motor Freight, Inc., Common Carrier Application*, 27 M. C. C. 51. On May 17, 1941, the petition was filed, and on June 17, 1941, the case was argued, submitted, and taken under advisement.

Fordham Bus Corp. v. *United States*, southern district of New York.

Suit to set aside the Commission's order of April 18, 1940, as amended by its order of June 26, 1941, in Docket No. MC–74634, *Fordham Bus Corp., Common Carrier Application*, 22 M. C. C. 827, 29 M. C. C. 293, on the ground that plaintiff's operations were those of a contract carrier and not of a common carrier. On May 21, 1941, the petition was filed, and on July 1, 1941, the proceeding was argued, submitted, and taken under advisement.

Benjamin E. Grove v. *United States*, middle district of Pennsylvania.

For prior case history see page 155, this volume.

Edward P. Cook, and Ray Koch, dba Koch's Motor Service, v. *United States*, northern district of Illinois.

Suit to set aside the Commission's order of January 2, 1941, in Docket No. MC–27089, denying application as a contract carrier by motor vehicle (27 M. C. C. 361). On June 4, 1941, the petition was filed, and on July 21, 1941, the Commission's answer was filed.

Ray C. Kline dba Independent Truckers Assn. v. *United States*, district of Nebraska.

Suit to set aside the Commission's order of December 7, 1940, in Docket No. MC–42246, *Ray C. Kline Common Carrier Application*, wherein the applicant was denied a certificate as a common or contract carrier by motor vehicle under the "grandfather" clauses of sections 206 (a) or 209 (a) of the Motor Carrier Act (26 M. C. C. 741). On June 10, 1941, the petition was filed, and on September 25, 1941, the case was argued, submitted, and taken under advisement.

Roy McArthur and G. A. McArthur, a copartnership, dba Anaconda Van Lines v. *United States*, northern district of Illinois.

Suit to set aside the Commission's order of March 10, 1941, in Docket No. MC–75732, Roy McArthur and G. A. McArthur Common Carrier Application, wherein applicants were found to have failed to establish the right to a certificate as a common carrier by motor vehicle of household goods between Chicago, Ill., and other points in the United States over irregular routes. On June 6, 1941, the petition was filed, and on September 22, 1941, the case was argued, submitted, and taken under advisement.

Woodruff v. *United States*, district of Connecticut.

For prior case history see page 156, this volume.

Ernest E. Moore dba Moore Motor Freight Lines v. *United States*, district of Minnesota.

Suit to set aside the Commission's order in Docket No. MC–17481, dated March 13, 1941, wherein the Commission found that applicant was not entitled to a certificate as a common carrier, or a permit as a contract carrier by motor vehicle of any commodities or between any points whatsoever, and also denied application for a broker's license (28 M. C. C. 187). On July 8, 1941, the petition was filed, and on September 23, 1941, the case was argued, submitted, and taken under advisement.

In the Matter of New York, N. H. & H. Reorganization, district of Connecticut.

Petition of Bankers Trust Company to fix maximum expenses and compensation of mortgage trustees, notwithstanding the provisions of section 77 (c) (12) of the Bankruptcy Act. On July 7, 1941, the Commission's intervention and motion to dismiss were filed, and on July 9, 1941, there was an argument on this motion. On July 30, 1941, the Commission's brief in support of motion to dismiss was filed.

In the Matter of Chicago, R. I. & P. Ry. Co., Debtor, northern district of Illinois, eastern division.

Petition of Bankers Trust Company to fix maximum expenses and compensation of mortgage trustee, notwithstanding the provisions of section 77 (c) (12) of the Bankruptcy Act. On July 5, 1941, Commission's motion for leave to intervene and be heard in opposition to supplemental petition of Bankers Trust Company and R. G. Page, as trustees under the general gold bond mort-

gage of debtor, in support of their secured claim for compensation and expenses, and motion to continue hearing set for July 11, 1941, was filed. On September 6, 1941, a brief was filed on behalf of the Commission on the jurisdictional question.

In the Matter of St. Louis-S. F. Ry. Co., Debtor, eastern district of Missouri, eastern division.

For case history see page 156, this volume.

In the Matter of Ft. Dodge, D. M. & S. R., Co., Debtor, southern district of Iowa, central division.

For case history see page 156, this volume.

Northern Pac. Ry. Co. v. *United States*, district of Minnesota.

Suit to set aside the Commission's order of March 31, 1941, in Docket No. 27938, *Minneapolis Traffic Assn.* v. *Chicago & N. W. Ry. Co.*, wherein the Commission found that defendants' rules and practices governing the absorption of switching charges at Minneapolis, etc., on grain and grain products, were unreasonable, and, as to Minneapolis, unjustly discriminatory and unduly prejudicial. (241 I. C. C. 207; 245 I. C. C. 11). On July 17, 1941, the petition was filed, and on September 22, 1941, the case was argued, submitted, and taken under advisement.

Crown Coach Co. v. *United States*, western district of Missouri, southwestern division.

Suit to set aside an order of division 3, dated January 29, 1941, in Docket No. MC–C–141, *Crown Coach Co.* v. *Mo-Ark Coach Lines, Inc.*, 27 M. C. C. 746, (petition for reconsideration denied by entire Commission on May 12, 1941), wherein the Commission found that the prescription of through interstate bus routes over plaintiff's lines from Kansas City, Mo., through Springfield, Mo., to destinations on the Mo-Ark Coach Lines were not necessary or desirable in the public interest. On July 25, 1941, the petition was filed, and on September 8, 1941, intervention and answer of the Commission were filed.

Atlantic Lumber Corp. v. *Southern Pac. Co.*, district of Oregon.

Suit to set aside an order of division 3, dated September 13, 1940, in Docket No. 28334, *Atlantic Lumber Corp.* v. *Southern Pacific Co.*, wherein the Commission found that the rates charged on 21 carloads of rough lumber shipped from Grande Ronde, Yamhill, Willamina, Sheridan, and Lyons, Oreg., to East Portland, Oreg., for transshipment by water to Brooklyn, N. Y., and demurrage charges for detention at East Portland, not unreasonable (241 I. C. C. 461). On July 29, 1941, petition was filed, and on September 6, 1941, the Commission's answer was filed.

Laubach Transp. Co. v. *United States*, district of New Jersey.

Suit to set aside the Commission's order of May 29, 1941, in Docket No. MC–93114, C. K. Laubach Common Carrier Application, wherein the Commission denied application for a certificate for the transportation of general commodities between specified points over irregular routes. On August 7, 1941, the complaint was filed, and on September 10, 1941, the Commission's answer was filed.

Detroit-Pittsburgh Motor Freight, Inc., v. *United States*, northern district of Ohio, eastern division.

Suit to set aside, in part, the Commission's order of January 10, 1941, in Docket No. MC–37343, *Detroit-Pittsburgh Motor Freight Inc., Common Carrier Application*, wherein the applicant was denied a certificate as a common carrier by motor vehicle of general commodities over specified routes under the "grandfather" clause of the Motor Carrier Act (27 M. C. C. 569). On August 7, 1941, the complaint was filed, and on August 28, 1941, the Commission's answer was filed.

Ziffrin Truck Lines, Inc., v. *United States*, southern district of Indiana.

Suit to set aside the Commission's order in Docket No. MC–79571 (28 M. C. C. 379), insofar as it denied certificate under the "grandfather" clause of section 206 (a) of the Motor Carrier Act.

On September 3, 1941, the bill of complaint was filed, and on September 26, 1941, after argument, an interlocutory injunction was denied.

Davidson Transfer & Storage Co. v. *United States*, eastern district of Pennsylvania.

Suit of a civil nature to set aside the Commission's report and order of January 17, 1941, in No. MC–21576 (Sub-No. 2), *Schultz Refrigerated Service, Inc., Extension of Operations—Bridgeton*, authorizing the Schultz Refrigerated Service to operate as a common carrier by motor vehicle between points in New Jersey, Pennsylvania, New York, Delaware, Maryland, and the District of

Columbia, over irregular routes (24 M. C. C. 804; 27 M. C. C. 805). On September 17, 1941, the petition was filed.

Public Service Comm. of Maryland v. *United States*, district of Maryland.

Suit to set aside the Commission's report and certificate of March 6, 1941, as amended, in Finance Docket 12742, *Confluence & Oakland Railroad Company et al. Abandonment*, permitting the Baltimore & Ohio R. Co. to abandon its Confluence & Oakland branch (244 I. C. C. 451). On September 18, 1941, the bill of complaint was filed, and on September 30, 1941, the case was argued, submitted, and taken under advisement.

Louis C. Dearman v. *United States*, northern district of Ohio, eastern division.

Suit to enjoin the Commission's order in Docket No. MC–20779, *Dearman Common Carrier Application* (27 M. C. C. 619). On September 18, 1941, the bill of complaint was filed.

Hoboken Mfrs. R. Co. v. *United States*, district of New Jersey.

For case history see 1940 Annual Report, page 146. On June 19, 1941, the case was argued and submitted for decision.

APPENDIX C

STATISTICAL SUMMARIES

A. Statistics of railway development since 1930.
B. Statistics from monthly and other periodical reports of carriers.

A. Statistics of Railway Development

Data for years preceding 1930 for most of the tables appear in prior reports.

TABLE I.—*Mileage operated and mileage owned by steam railways in the United States, 1930–40*

Year ended Dec. 31—	Road owned in the United States [1] (first main track)	Total miles of all tracks operated, excluding trackage rights [2]	Mileage operated by classes I, II, and III line-haul railways (including trackage rights)			
			First main track	Second or additional main tracks	Yard track and sidings	All tracks
1930	249,052	410,634	260,440	42,742	126,701	429,883
1931	248,829	410,210	259,999	42,780	127,044	429,823
1932	247,595	408,346	258,869	42,556	126,977	428,402
1933	245,703	405,064	256,741	42,397	126,526	425,664
1934	243,857	401,620	254,882	42,109	125,410	422,401
1935	241,822	398,396	252,930	41,916	124,382	419,228
1936	240,104	395,263	251,542	41,731	123,108	416,381
1937	238,539	393,030	250,582	41,579	122,411	414,572
1938	236,842	389,704	248,474	41,589	121,261	411,324
1939	235,064	386,819	246,922	41,445	119,983	408,350
1940	233,670	385,178	245,740	41,373	118,862	405,975

[1] Includes mileage of some small companies that do not make annual reports to the Commission.
[2] Includes mileage of classes I, II, and III line-haul railways and switching and terminal companies.

TABLE II.—*Equipment of steam railways, including switching and terminal companies in service at the close of each year, 1930–40* [1]

Year ended Dec. 31—	Number of locomotives	Average tractive effort [2]	Number of freight cars (excluding caboose)	Average capacity [2]	Number of passenger-train cars
		Pounds		*Tons*	
1930	60,189	45,225	2,322,267	46.6	53,584
1931	58,652	45,764	2,245,904	47.0	52,096
1932	56,732	46,299	2,184,690	47.0	50,598
1933	54,228	46,916	2,072,632	47.5	47,677
1934	51,423	47,712	1,973,247	48.0	44,884
1935	49,541	48,367	1,867,381	48.3	42,426
1936	48,009	48,972	1,790,043	48.8	41,390
1937	47,555	49,412	1,776,428	49.2	40,949
1938	46,544	49,803	1,731,096	49.4	39,931
1939	45,172	50,395	1,680,519	49.7	38,977
1940	44,333	50,905	1,684,171	50.0	38,308

[1] Privately owned cars and cars owned by the Pullman Co. are not included. In 1940, privately owned freight-carrying cars numbered 281,214, and cars owned by the Pullman Co., 6,910.
[2] Class I steam railways.

TABLE III.—*Railway capital actually outstanding and net income, 1930–40: Steam railways, excluding switching and terminal companies*

Year ended Dec. 31—	Total railway capital	Funded debt unmatured [1]	Stock	Ratio of debt to capital	Net income [2]	Ratio of net income to stock
	Thousands	*Thousands*	*Thousands*	*Percent*	*Thousands*	*Percent*
1930	$22. 782, 889	$12, 771, 351	$10, 011, 538	56. 1	$577, 923	5. 77
1931	22, 747, 229	12, 738, 815	10, 008, 414	56. 0	169, 287	1. 69
1932	22, 831, 547	12, 788, 785	10. 042, 762	56. 0	*121, 630*	----------
1933	22, 656, 920	12, 629, 828	10, 027, 092	55. 7	26, 543	. 26
1934	22, 412, 057	12, 453, 507	9, 958, 550	55. 6	23, 282	. 23
1935	22, 079, 551	12, 154, 349	9, 925, 202	55. 0	52, 177	. 53
1936	21, 961, 035	12, 031, 385	9, 929, 650	54. 8	221, 591	2. 23
1937	21, 694, 645	11, 881, 981	9, 812, 664	54. 8	146, 351	1. 49
1938	21, 428, 320	11, 639, 907	9, 788, 413	54. 3	*87, 468*	----------
1939	21, 193, 501	11, 419, 945	9, 773, 556	53. 9	141, 134	1. 44
1940	21, 047, 280	11, 277, 306	9, 769, 974	53. 6	243, 148	2. 49

[1] Does not include long-term debt in default. For class I railways and their nonoperating subsidiaries such debt amounted to $1,079,545 (thousands) at the close of 1940.

[2] Intercorporate duplications not eliminated, but amounts shown correspond with the stock in the second preceding column. Deficits shown in italics.

TABLE IV.—*Dividends, 1930–40: Steam railways, including lessor companies, but excluding switching and terminal companies*

Year ended Dec. 31—	Proportion of stock paying dividends [1]	Amount of dividends [1]	Average rate on—	
			Dividend-paying stock [1]	All stock
	Percent	*Thousands*	*Percent*	*Percent*
1930	76. 93	$603, 150	7. 83	6. 02
1931	73. 20	401, 463	5. 48	4. 01
1932	32. 85	150, 774	4. 57	1. 50
1933	31. 11	158, 790	5. 09	1. 58
1934	34. 26	211, 767	6. 21	2. 13
1935	34. 39	202, 568	5. 94	2. 04
1936	36. 20	231, 733	6. 45	2. 33
1937	39. 64	227, 596	5. 85	2. 32
1938	32. 07	136, 270	4. 34	1. 39
1939	32. 64	179, 412	5. 62	1. 84
1940	38. 29	216, 522	5. 79	2. 22

[1] Includes figures for lessors and operating railways without excluding duplications on account of intercorporate payments. Stock dividends for the last 11 years have been as follows: $9,600,000 in 1930; $400,000 in 1931; $1,572,000 in 1932; and $15,436,348 in 1936.

TABLE V.—*Reported property investment and selected income items, 1930–40: Operating steam railways, excluding switching and terminal companies*

Year ended Dec. 31—	Investment [1]	Investment per mile of road	Depreciation reserve	Net railway operating income [2]	Other income [3]	Fixed charges and other deductions [4]	Dividends declared [5]
	Thousands		*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Thousands*
1930	[6] $26,051,000	$105,661	$2,360,767	$874,154	$361,196	$716,730	$511,259
1931	[6] 26,094,899	105,953	2,520,738	528,204	307,785	708,622	333,986
1932	[6] 26,086,991	106,337	2,632,922	325,332	226,092	701,500	97,245
1933	[6] 25,901,962	106,437	2,707,942	477,326	213,592	703,745	98,443
1934	[6] 25,681,608	106,279	2,764,726	465,896	203,941	694,360	136,018
1935	[6] 25,500,465	106,339	2,771,404	505,415	186,228	686,688	131,448
1936	[6] 25,432,388	106,783	2,809,063	675,600	182,821	693,479	175,332
1937	[6] 25,636,082	108,235	2,950,848	597,841	170,337	670,291	172,795
1938	[6] 25,595,739	108,871	3,044,972	376,865	150,566	654,023	85,329
1939	[6] 25,538,157	109,331	3,102,779	595,961	156,050	658,505	129,386
1940	[6] 25,646,014	110,449	3,095,237	690,554	163,385	662,848	166,506

[1] Includes investment of operating, lessor, and proprietary companies. Proprietary companies do not render annual reports to the Commission but information concerning them is given in reports of the operating companies.

[2] This term, as defined in the Interstate Commerce Act, means "railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents."

[3] Includes amounts received as interest or dividends on railroad securities owned by reporting carriers. See Statistics of Railways, table 109.

[4] The interest included represents accruals, not payments. In 1940 the interest accrued on unmatured funded debt in excess of payments was $127,944,101 for class I steam railways.

[5] Does not exclude duplication on account of intercorporate payments. Excludes dividends declared by lessor companies. Stock dividends for the last 11 years have been as follows: $9,600,000 in 1930; $400,000 in 1931; $1,572,000 in 1932; and $15,436,348 in 1936.

[6] Includes investment of lessor and proprietary companies, as follows, but excludes investment of proprietary companies in systems which file consolidated annual reports combining the mileage, investment, and other items on a net system basis.

Year	Lessor companies	Proprietary companies	Year	Lessor companies	Proprietary companies
	Thousands	*Thousands*		*Thousands*	*Thousands*
1930	$4,497,568	$1,095,631	1936	$4,690,072	$861,696
1931	4,188,768	1,114,637	1937	4,174,633	848,173
1932	4,578,876	1,121,945	1938	4,105,320	840,033
1933	4,577,564	1,096,264	1939	4,104,416	853,848
1934	4,306,287	890,581	1940	4,093,043	809,391
1935	4,302,199	861,716			

TABLE VI.—*Operating revenues, operating expenses, and taxes, class I steam railways, 1930–40*

Year ended Dec. 31—	Operating revenues	Freight revenues	Passenger revenues	Operating expenses	Railway tax accruals [1]	Ratio to revenues		
						Maintenance of way and structures	Maintenance of equipment	Total operating expenses
	Thousands	*Thousands*	*Thousands*	*Thousands*	*Thousands*	*Percent*	*Percent*	*Percent*
1930	$5,281,197	$4,075,698	$728,488	$3,930,929	$350,042	13.36	19.30	74.43
1931	4,188,343	3,248,754	550,250	3,223,575	304,149	12.67	19.51	76.97
1932	3,126,760	2,446,864	376,539	2,403,445	276,061	11.23	19.80	76.87
1933	3,095,404	2,488,848	328,957	2,249,232	251,757	10.41	19.34	72.66
1934	3,271,567	2,629,302	345,890	2,441,823	241,813	11.17	19.50	74.64
1935	3,451,929	2,786,118	357,493	2,592,741	239,441	11.41	19.75	75.11
1936	4,052,734	3,302,894	412,144	2,931,425	322,392	11.22	19.32	72.33
1937	4,166,069	3,370,959	442,518	3,119,065	329,401	11.90	19.84	74.87
1938	3,565,491	2,852,112	405,598	2,722,199	343,194	11.78	18.97	76.35
1939	3,995,004	3,244,445	416,531	2,918,210	358,445	11.69	19.17	73.05
1940	4,296,601	3,528,782	416,897	3,089,417	398,725	11.57	19.06	71.90

[1] Includes lessor companies.

TABLE VII.—*Number and compensation of employees, class I steam railways, 1930–40*

Year ended Dec. 31—	Average number of employees during year [1]	Compensation of railway employees [2]		
		Total	Ratio to revenues	Ratio to expenses
		Thousands	*Percent*	*Percent*
1930	1,487,839	$2,550,789	48.30	64.89
1931	1,258,719	2,094,994	50.02	64.99
1932	1,031,703	1,512,816	48.38	62.94
1933	971,196	1,403,841	45.35	62.41
1934	1,007,702	1,519,352	46.44	62.22
1935	994,371	1,643,879	47.62	63.40
1936	1,065,624	1,848,636	45.61	63.06
1937	1,114,663	1,985,447	47.66	63.66
1938	939,171	1,746,141	48.97	64.14
1939	987,675	1,863,334	46.64	63.85
1940	1,026,848	1,964,125	45.71	63.58

[1] This is the average of 12 counts made at middle of month and differs from the number of persons receiving pay during the month or year regardless of whether for a long or short period.
[2] In 1940, $1,855,719 (thousands), or 94.48 percent of the reported compensation, was chargeable to operating expenses.

TABLE VIII.—*Transportation service performed by steam railways, 1930–40, excluding switching and terminal companies*

Year ended Dec. 31—	Freight service					Passenger service		
	Revenue tons originated	Revenue tons carried 1 mile	Loaded-car miles	Average haul		Passengers carried	Passenger-miles	Average journey per passenger [1]
				United States as a system	For the individual road			
	Thousands	*Millions*	*Millions*	*Miles*	*Miles*	*Millions*	*Millions*	*Miles*
1930	1,220,134	385,815	15,893	316.21	177.06	708	26,876	37.96
1931	944,846	311,073	13,271	329.23	183.62	599	21,933	36.60
1932	678,854	235,309	10,430	346.63	191.45	481	16,997	35.36
1933	733,391	250,651	10,776	341.77	189.53	435	16,368	37.64
1934	802,276	270,292	11,657	336.91	187.65	452	18,069	39.96
1935	831,656	283,637	12,076	341.05	188.77	448	18,509	41.31
1936	1,011,530	341,182	14,031	337.29	188.94	492	22,460	45.60
1937	1,075,237	362,815	14,702	337.43	188.14	500	24,695	49.42
1938	819,733	291,866	12,266	356.05	196.87	455	21,657	47.65
1939	954,924	335,375	13,639	351.21	193.91	454	22,713	50.02
1940	1,069,045	375,369	14,777	351.13	192.75	456	23,816	52.22

[1] This average is affected by the changing ratio of commutation traffic to the total traffic.

TABLE IX.—*Carload, trainload, and density of traffic, class I steam railways, 1930–40*

Year ended Dec. 31—	Ton-miles, revenue and nonrevenue freight per loaded freight-car mile	Revenue ton-miles per train-mile	Passenger-miles per car-mile	Passenger-miles per train-mile	Revenue ton-miles per mile of road	Passenger-miles per mile of road
1930	26.52	717	11	49	1,583,465	111,063
1931	25.57	669	10	45	1,276,861	90,662
1932	24.75	600	10	40	968,772	70,467
1933	25.44	635	10	43	1,035,707	68,100
1934	25.48	639	11	47	1,124,542	75,730
1935	25.79	662	11	48	1,185,368	78,116
1936	26.77	703	13	55	1,432,154	95,232
1937	27.07	724	13	59	1,530,667	105,377
1938	26.04	691	12	55	1,235,843	93,544
1939	26.86	743	13	58	1,427,115	98,559
1940	27.59	781	13	61	1,602,009	103,621

TABLE X.—*Average receipts per ton, per ton-mile, per passenger, and per passenger-mile, 1930–40*

Year ended Dec. 31—	Average amount received for each ton originated	Revenue per ton-mile	Average receipts per passenger	Revenue per passenger-mile
		Cents		*Cents*
1930	$3.397	1.074	$1.032	2.719
1931	3.495	1.062	.921	2.515
1932	3.661	1.056	.785	2.221
1933	3.448	1.009	.758	2.015
1934	3.330	.989	.767	1.920
1935	3.404	.998	.800	1.936
1936	3.318	.984	.839	1.840
1937	3.189	.945	.888	1.796
1938	3.539	.994	.894	1.877
1939	3.453	.983	.920	1.839
1940	3.353	.955	.916	1.755

TABLE XI.—*Fuel consumed by steam locomotives, and rails and ties laid, class I steam railways, not including switching and terminal companies, 1930–40*

Year ended Dec. 31—	Bituminous coal	Anthracite coal	Fuel oil		Total fuel [1]	Rails applied in replacement and betterment (all tracks)	Ties laid in previously constructed tracks	
							Cross ties	Switch and bridge ties
	Net tons	*Net tons*	*Thousands of gallons*	*Equivalent tons*	*Net tons*	*Long tons*	*Number*	*Feet (b. m.)*
1930	98,399,643	1,139,508	2,366,569	[2]	114,458,305	2,673,674	63,353,828	235,314,604
1931	81,724,711	542,719	2,015,695	[2]	94,924,409	1,714,905	51,501,659	188,594,522
1932	66,497,832	327,484	1,759,124	11,001,819	77,858,747	797,320	39,190,473	140,565,691
1933	66,198,465	477,574	1,709,032	10,668,937	77,384,143	862,298	37,295,716	134,148,930
1934	70,495,547	608,079	1,868,381	11,667,945	82,810,885	1,165,304	43,306,205	155,248,532
1935	71,334,736	508,229	1,998,176	12,920,919	84,782,729	1,159,039	44,326,151	156,535,925
1936	81,129,740	484,537	2,353,484	15,106,820	96,755,785	1,701,350	47,361,015	167,377,828
1937	82,666,673	473,286	2,581,441	16,561,713	99,732,944	1,974,597	47,729,538	159,429,849
1938	68,793,756	432,683	2,240,299	14,402,304	83,664,267	1,202,943	41,363,224	141,887,780
1939	73,935,025	719,200	2,334,571	15,020,974	89,718,757	1,719,306	45,088,278	147,044,571
1940	79,628,318	285,653	2,502,868	16,118,796	96,066,679	1,911,513	43,620,653	145,553,116

[1] In the statement of consumption of fuel by locomotives, 1 cord of hardwood is considered as equivalent to ⅔ of a ton of fuel and 1 cord of softwood as equivalent to ½ of a ton of fuel. The ratio used in reducing fuel oil to tons of fuel is left to the experience of each road. Figures include data for cordwood, also a small amount of miscellaneous fuel. Does not include equivalent tons for fuel consumed by motive power units, other than steam locomotives, which in 1940 amounted to 3,999,685 tons.

[2] Data not available, except approximately by subtraction.

TABLE XII.—*Selected data from annual reports of class I steam railways, 1940 and 1939, by districts*

Item	All districts		Eastern district	
	Year ended Dec. 31—			
	1940	1939	1940	1939
Railway operating revenues (thousands)	$4,296,601	$3,995,004	$1,879,182	$1,726,110
Railway operating expenses:				
Total (thousands)	$3,089,417	$2,918,210	$1,356,273	$1,259,339
Maintenance of way and structures (thousands)	$497,031	$466,831	$194,857	$177,082
Maintenance of equipment (thousands)	$818,975	$765,935	$370,481	$339,833
Transportation—rail line (thousands)	$1,494,285	$1,412,655	$684,017	$637,442
Net railway operating income (thousands)	$682,133	$588,829	$291,200	$252,864
Freight-service statistics:				
Freight revenue (thousands)	$3,528,782	$3,244,445	$1,499,413	$1,348,811
Revenue tons originated (thousands)	1,009,421	901,669	429,565	382,950
Total revenue tons carried (thousands)	1,843,290	1,636,215	949,523	831,604
Revenue tons carried 1 mile (thousands)	373,253,197	333,438,412	150,774,377	133,970,466
Revenue per ton-mile (cents)	0.945	0.973	0.994	1.007
Revenue ton-miles per mile of road	1,602,009	1,427,115	2,624,236	2,322,114
Freight train-miles (thousands)	481,892	451,990	166,516	152,871
Revenue ton-miles per train-mile	781	743	951	885
Loaded car-miles (thousands)	14,699,023	13,564,969	5,558,145	5,090,789
Empty car-miles (thousands)	9,081,658	8,217,025	3,445,425	3,078,185
Ton-miles revenue and nonrevenue freight per loaded car-mile	27.59	26.86	28.90	28.09
Average haul per road (miles)	202.49	203.79	158.79	161.03
Passenger-service statistics:				
Passenger revenue (thousands)	$416,897	$416,531	$226,826	$232,376
Passengers carried (thousands)	452,921	450,373	334,687	334,772
Passenger-miles (thousands)	23,762,359	22,651,334	12,547,060	12,014,594
Revenue per passenger-mile (cents)	1.75	1.84	1.81	1.93
Passenger-miles per mile of road	103,621	98,559	228,523	217,656
Average journey per passenger (miles)	52.46	50.29	37.49	35.89
Passenger-miles per train-mile	61	58	77	74

Item	Southern district		Western district	
	Year ended Dec. 31—			
	1940	1939	1940	1939
Railway operating revenues (thousands)	$818,550	$754,098	$1,598,869	$1,514,796
Railway operating expenses:				
Total (thousands)	$554,809	$514,396	$1,178,335	$1,144,475
Maintenances of way and structures (thousands)	$91,319	$83,294	$210,855	$206,455
Maintenance of equipment (thousands)	$159,901	$145,713	$288,593	$280,389
Transportation—rail line (thousands)	$252,598	$236,901	$557,670	$538,312
Net railway operating income (thousands)	$166,763	$157,849	$224,170	$178,116
Freight-service statistics:				
Freight revenue (thousands)	$707,816	$651,373	$1,321,553	$1,244,261
Revenue tons originated (thousands)	252,972	221,446	326,884	297,273
Total revenue tons carried (thousands)	385,722	338,710	508,045	465,901
Revenue tons carried 1 mile (thousands)	87,883,840	77,660,018	134,594,980	121,867,928
Revenue per ton-mile (cents)	0.805	0.839	0.982	1.021
Revenue ton-miles per mile of road	1,983,073	1,746,660	1,026,366	927,227
Freight train-miles (thousands)	102,804	96,383	212,572	202,736
Revenue ton-miles per train-mile	862	811	637	605
Loaded car-miles (thousands)	2,951,361	2,716,931	6,189,517	5,757,249
Empty car-miles (thousands)	1,891,299	1,703,419	3,744,934	3,435,421
Ton-miles revenue and nonrevenue freight per loaded car-mile	31.97	30.76	24.33	23.93
Average haul per road (miles)	227.84	229.28	264.93	261.57
Passenger-service statistics:				
Passenger revenue (thousands)	$59,591	$53,474	$130,480	$130,681
Passengers carried (thousands)	51,654	49,299	66,580	66,302
Passenger-miles (thousands)	3,472,075	2,975,381	7,743,224	7,661,359
Revenue per passenger-mile (cents)	1.72	1.80	1.69	1.71
Passenger-miles per mile of road	78,346	66,920	59,519	58,860
Average journey per passenger (miles)	67.22	60.35	116.30	115.55
Passenger-miles per train-mile	52	45	48	47

B. Statistics From Monthly and Other Periodical Reports of Carriers

TABLE A.—*Railway operating revenues, railway operating expenses, and net railway operating income, by months, 1937–41, class I steam railways, excluding switching and terminal companies*

	1941	1940	1939	1938	1937
Miles of road operated	232, 130	232, 437	233, 160	233, 842	235, 052
RAILWAY OPERATING REVENUES					
January	$377, 374, 190	$345, 639, 123	$305, 778, 767	$279, 108, 385	$331, 707, 494
February	358, 413, 499	313, 594, 852	276, 904, 334	251, 037, 015	321, 853, 619
March	416, 319. 160	327, 131, 789	315. 091, 017	283, 017, 974	377, 725, 321
April	375, 008, 369	321, 567, 097	282, 117, 754	268, 213, 596	351, 506, 719
May	442, 285, 876	343, 494, 649	302. 617, 948	272, 609, 400	352, 542, 542
June	455, 022, 722	344, 952, 789	321, 616, 735	282, 080, 672	351, 651, 223
July	485, 446, 306	366, 220. 237	332, 435, 852	299, 589, 726	365, 085, 700
August	493, 674. 008	381, 538, 438	344, 399, 562	315. 335, 418	359, 611, 956
September	488, 978, 900	382, 714, 515	381, 117, 880	322. 542. 835	363, 070, 851
October		413, 589. 928	419, 717, 399	353, 384, 223	372. 925, 813
November		375, 363. 842	368, 026, 739	319, 629, 292	318, 180, 377
December		381, 791, 527	345, 180, 252	318, 281, 016	300, 320, 822
12 months		[1] 4, 296, 660, 473	[1] 3, 995, 004, 243	[1] 3, 564, 829, 551	[1] 4, 166, 068, 601
RAILWAY OPERATING EXPENSES					
January	$268, 968, 882	$257, 395, 976	$232, 946, 449	$232, 565, 356	$253, 668, 741
February	255, 590, 196	240, 579, 920	220, 619, 933	215, 353, 899	244, 080, 932
March	283, 328, 538	248, 634, 646	240, 358, 779	229, 004, 115	266, 198, 097
April	274, 938, 371	245, 877, 517	227, 622, 288	219, 484, 312	261, 949, 013
May	296, 590, 475	252, 854, 916	237, 411, 054	217, 054, 008	267, 225, 209
June	298, 932, 432	252, 507, 423	241, 785, 658	218, 132, 406	265, 521, 794
July	310, 034, 946	262, 064, 921	241, 962, 092	222, 166, 822	266, 585, 650
August	313, 843, 279	267, 571, 190	247, 621, 627	229, 572, 952	268, 190, 412
September	312, 288, 924	260, 239. 661	251, 166, 939	231, 982, 740	262, 711, 697
October		276, 716, 605	271, 538, 049	242, 354, 484	270, 357, 354
November		259, 454, 782	256, 170, 301	231, 203, 930	249, 295, 347
December		266, 134, 183	249, 006, 533	232, 619, 459	243, 354, 701
12 months		[1] 3, 089, 474, 191	[1] 2, 918, 209, 705	[1] 2, 721, 494, 485	[1] 3, 119, 064, 932
MAINTENANCE OF WAY AND STRUCTURES					
January	$36, 737, 443	$33, 945, 314	$31, 375, 988	$30, 585, 245	$33, 103, 794
February	36, 145, 377	33. 222, 303	30, 597, 113	29, 307, 131	34, 231, 503
March	41, 168, 148	36, 383, 946	34, 675, 291	32, 216, 884	37, 559, 561
April	45, 461, 554	39, 665, 922	36, 459, 178	33, 144, 187	42, 104, 234
May	51, 640, 349	44, 187, 205	41, 826, 338	34, 309, 654	46, 607, 877
June	52. 532, 563	45, 302, 346	44, 379, 672	36, 021, 878	48, 527, 374
July	54, 709. 486	46, 946, 771	43, 186, 402	36, 955, 098	47, 644, 140
August	56, 209, 812	48, 516, 173	43, 862, 401	39, 853. 739	47, 702, 443
September	56, 022, 630	45, 739, 460	42, 916, 549	41, 292. 520	45, 349. 166
October		47. 205, 781	44, 176, 304	40, 352, 359	42, 843, 518
November		39, 607, 262	38, 092, 758	34, 597, 265	36, 519, 126
December		36, 472, 253	35, 282, 824	31, 352, 097	33, 420, 280
12 months		[1] 497, 086, 654	[1] 466, 830, 717	[1] 420, 088, 057	[1] 495, 593, 910

[1] Includes certain corrections not appearing in monthly figures.

TABLE A.—*Railway operating revenues, railway operating expenses, and net railway operating income, by months, 1937–41, class I steam railways, excluding switching and terminal companies*—Continued

MAINTENANCE OF EQUIPMENT

Month	1941	1940	1939	1938	1937
January	$74, 217, 719	$68, 978, 746	$62, 105, 960	$58, 281, 255	$67, 808, 476
February	71, 265, 850	64, 985, 513	58, 960, 882	54, 760, 047	64, 945, 839
March	78, 568, 702	66, 666, 934	65, 159, 441	57, 929, 168	72, 808, 266
April	74, 863, 857	65, 267, 825	58, 927, 063	54, 870, 959	71, 254, 069
May	80, 997, 206	65, 423, 840	59, 220, 509	53, 007, 538	71, 452, 570
June	80, 939, 704	65, 854, 879	61, 852, 394	52, 830, 959	72, 430, 105
July	83, 234, 063	69, 322, 759	61, 039, 743	52, 995, 172	70, 657, 923
August	84, 138, 974	70, 530, 994	63, 192, 294	55, 806, 828	70, 913, 273
September	83, 152, 521	68, 410, 234	64, 824, 135	56, 375, 021	68, 772, 597
October		74, 016, 019	73, 553, 444	59, 740, 284	69, 575, 830
November		69, 063, 518	70, 802, 890	59, 458, 704	65, 312, 767
December		70, 548, 671	66, 296, 405	60, 318, 603	60, 787, 338
12 months		[1] 818, 975, 349	[1] 765, 935, 263	[1] 676, 374, 537	[1] 826, 708, 829

TRANSPORTATION EXPENSE

January	$134, 538, 894	$131, 369, 136	$117, 101, 747	$120, 444, 338	$127, 276, 695
February	125, 673, 083	120, 174, 222	109, 455, 898	109, 169, 091	120, 434, 591
March	140, 155, 114	122, 885, 664	118, 172, 058	116, 347, 744	130, 485, 290
April	131, 149, 656	118, 168, 721	110, 205, 043	109, 520, 543	123, 373, 180
May	140, 297, 169	120, 264, 970	113, 829, 958	107, 843, 429	123, 898, 837
June	141, 186, 174	118, 137, 928	112, 915, 180	107, 371, 105	121, 642, 652
July	147, 676, 709	122, 841, 060	115, 269, 955	110, 295, 339	125, 236, 390
August	149, 336, 430	125, 886, 937	117, 980, 807	112, 186, 407	126, 685, 540
September	148, 985, 276	123, 941, 092	121, 247, 357	112, 627, 892	125, 853, 694
October		133, 011, 773	131, 425, 013	120, 646, 564	135, 118, 146
November		128, 618, 498	124, 975, 874	115, 605, 926	124, 587, 737
December		135, 970, 587	125, 215, 019	118, 983, 530	125, 718, 930
12 months		[1] 1, 500, 958, 069	[1] 1, 417, 793, 911	[1] 1, 361, 041, 910	[1] 1, 510, 274, 991

NET RAILWAY OPERATING INCOME [2]

January	$62, 357, 407	$46, 012, 810	$32, 947, 172	$7, 144, 036	$38, 866, 838
February	58, 478, 869	32, 856, 489	18, 637, 706	*1, 909, 139*	38, 783, 618
March	80, 627, 170	37, 034, 270	34, 375, 047	14, 728, 275	69, 881, 244
April	52, 568, 881	34, 120, 523	15, 323, 766	9, 397, 132	48, 357, 724
May	88, 630, 030	47, 408, 236	25, 172, 741	16, 665, 684	44, 239, 456
June	93, 261, 372	48, 090, 783	39, 166, 788	25, 159, 522	59, 354, 317
July	106, 314, 792	57, 725, 166	48, 996, 611	38, 431, 251	60, 985, 276
August	111, 317, 825	66, 530, 181	54, 567, 356	45, 421, 781	50, 756, 743
September	104, 070, 310	74, 715, 435	86, 529, 622	50, 406, 298	59, 621, 184
October		86, 988, 444	101, 716, 356	68, 594, 769	60, 860, 439
November		71, 098, 917	70, 414, 617	49, 692, 171	32, 519, 097
December		78, 790, 669	60, 981, 299	49, 418, 855	25, 994, 857
12 months		[1] 682, 118, 487	[1] 588, 829, 078	[1] 373, 150, 639	[1] 590, 203, 896

[1] Includes certain corrections not appearing in monthly figures.
[2] For meaning of this term see table V, footnote 2. Deficit in italics.

TABLE A–2.—*Other income and deductions, by months, 1937–41, class I steam railways, excluding switching and terminal companies*

OTHER INCOME

Month	1941	1940	1939	1938	1937
January	$11,861,952	$11,749,878	$12,417,602	$12,673,274	$12,066,447
February	10,077,730	10,184,902	9,959,551	10,382,950	11,008,239
March	10,486,137	11,885,382	9,707,157	10,510,025	10,741,794
April	10,257,659	10,967,442	10,567,202	10,636,045	10,546,362
May	11,113,383	11,571,524	10,750,235	11,618,229	11,428,973
June	15,039,186	15,124,357	13,492,219	12,740,083	15,585,908
July	14,224,541	13,300,792	12,001,399	11,575,292	13,497,062
August	11,738,642	11,028,491	10,433,058	11,207,865	11,057,193
September	12,252,589	11,674,364	11,035,246	11,262,649	11,842,423
October		11,753,099	11,047,877	11,642,791	10,980,476
November		15,006,907	17,078,555	12,374,431	15,114,744
December		34,503,941	32,376,572	28,559,320	40,534,276
12 months		[1] 168,929,903	[1] 160,866,266	[1] 155,026,160	[1] 174,597,572

INTEREST, RENTS, AND OTHER DEDUCTIONS

January	$54,514,695	$53,965,388	$53,833,175	$53,137,603	$55,418,397
February	53,592,601	53,136,028	52,707,994	52,878,429	54,787,968
March	55,856,953	53,601,743	54,322,959	53,250,873	55,734,195
April	55,562,958	54,078,181	53,514,744	53,299,883	55,080,386
May	56,606,331	54,832,557	54,238,053	53,561,392	54,346,482
June	55,500,384	55,597,627	53,923,948	53,639,135	56,580,449
July	57,011,152	54,484,161	54,231,208	53,891,180	55,287,370
August	57,556,338	55,410,713	54,760,372	55,448,596	54,573,112
September	56,928,211	55,250,466	56,302,569	55,273,985	55,353,083
October		56,087,644	56,053,856	56,066,190	54,805,350
November		55,525,390	54,432,293	54,511,594	53,183,251
December		62,141,186	56,629,447	55,483,072	60,786,708
12 months		[1] 659,923,169	[1] 654,950,210	[1] 649,525,504	[1] 666,130,434

NET INCOME [2]

January	$19,704,659	$3,797,302	*$8,468,402*	*$33,320,304*	*$4,502,006*
February	14,964,005	*10,094,640*	*24,110,743*	*44,404,605*	*4,996,113*
March	35,256,352	*4,632,087*	*10,240,752*	*28,012,572*	24,888,844
April	7,263,578	*8,990,217*	*27,623,773*	*33,266,705*	3,823,704
May	43,137,083	4,147,202	*18,315,076*	*25,277,485*	1,321,939
June	52,800,181	7,617,507	*1,264,946*	*15,739,527*	18,359,775
July	63,528,176	16,541,799	6,766,805	*3,884,635*	19,194,965
August	65,500,129	22,147,953	10,240,043	1,181,043	7,240,823
September	59,324,070	31,139,331	41,262,297	6,394,960	16,110,527
October		42,653,900	56,710,375	24,171,371	17,035,567
November		30,809,337	33,060,874	7,555,005	*5,549,413*
December		51,078,421	36,728,429	22,495,109	5,742,425
12 months		[1] 191,050,215	[1] 94,745,129	[1] *121,348,707*	[1] *98,671,034*

[1] Includes certain corrections not appearing in monthly figures.
[2] Deficits in italics.

TABLE B.—*Analysis of operating revenues and expenses, class I steam railways, excluding switching and terminal companies, 1939–41*

Item	9 months, January to September, inclusive		Calendar year—	
	1941	1940	1940	1939
Operating revenues:				
Freight	$3,232,982,787	$2,565,631,586	$3,537,149,471	$3,251,096,130
Passenger	378,069,203	311,719,145	417,268,962	416,903,149
Mail	77,580,672	72,583,755	101,086,894	99,012,370
Express	43,450,204	39,549,939	55,641,988	55,189,590
All other	160,440,164	137,369,067	185,453,158	172,803,004
Total	3,892,523,030	3,126,853,492	4,296,600,473	3,995,004,243
Percent of total:				
Freight	83.06	82.05	82.32	81.38
Passenger	9.71	9.97	9.71	10.44
Mail	1.99	2.32	2.35	2.48
Express	1.12	1.27	1.30	1.38
All other	4.12	4.39	4.32	4.32
Operating expenses:				
Maintenance of way and structures	$430,627,364	$373,909,443	$497,086,654	$466,830,717
Maintenance of equipment	711,378,597	605,441,724	818,975,349	765,935,263
Traffic	82,309,781	80,787,473	107,586,302	106,734,544
Transportation	1,258,995,984	1,103,669,729	1,500,958,069	1,417,793,911
General	100,172,137	98,066,928	130,449,524	127,568,819
All other	31,032,181	25,850,874	34,418,293	33,346,451
Total	2,614,516,044	2,287,726,171	3,089,474,191	2,918,209,705
Percent of total:				
Maintenance of way and structures	16.47	16.34	16.09	16.00
Maintenance of equipment	27.21	26.47	26.51	26.25
Traffic	3.15	3.53	3.48	3.66
Transportation	48.15	48.24	48.58	48.58
General	3.83	4.29	4.22	4.37
All other	1.19	1.13	1.12	1.14
Railway tax accruals	$425,008,845	$297,823,137	$396,353,538	$355,677,557
Equipment rents—debit	74,690,070	72,136,698	95,723,912	96,518,027
Joint-facility rents—debit	24,968,191	24,673,594	32,930,345	35,769,876
Net railway operating income	753,339,880	444,493,892	682,118,487	588,829,078

TABLE C.—*Ton-miles of freight (revenue and nonrevenue), by months, 1937–41, class I steam railways*

Month	1941	1940	1939	1938	1937
	Millions	*Millions*	*Millions*	*Millions*	*Millions*
January	36,063	32,518	28,155	26,405	33,138
February	34,182	29,662	25,558	23,182	32,218
March	40,577	31,118	28,834	26,036	36,655
April	31,615	29,909	23,982	22,784	32,261
May	43,398	33,081	25,741	23,697	34,090
June	44,036	32,900	28,461	23,881	31,848
July	46,067	33,716	29,829	26,305	33,745
August	49,237	36,406	31,397	27,434	33,699
September	47,616	37,060	36,118	29,119	34,862
October		38,614	40,069	32,759	36,760
November		35,949	35,125	28,474	29,097
December		34,904	31,453	28,129	27,417
12 months		[1] 405,836	[1] 364,723	[1] 318,202	[1] 395,787

[1] Includes certain corrections not appearing in monthly figures.

TABLE D.—*Selected operating averages in freight and passenger service of class I steam railways in the United States, 1939–41*

Item	8 months, January to August, inclusive		Calendar year—	
	1941	1940	1940	1939
Average miles of road included	230,821	231,494	231,403	232,024
Net ton-miles per mile of road per day	5,798	4,591	4,792	4,307
Percent of freight locomotives unserviceable	21.2	25.3	24.8	29.7
Percent of freight cars unserviceable	5.2	8.5	7.8	11.2
Percent of loaded of total car-miles	63.8	61.5	61.8	62.3
Percent east-bound or north-bound of loaded car-miles	57.6	58.7	58.7	58.9
Car-miles per car-day	39.6	33.8	34.9	31.7
Net ton-miles per car-day	710	574	596	531
Net ton-miles per loaded car-mile	28.1	27.6	27.6	26.9
Car-miles per train-mile	50.3	49.2	49.7	48.5
Gross ton-miles per train-mile (excluding locomotives and tenders)	2,111	2,023	2,047	1,984
Net ton-miles per train-mile (including non-revenue tons)	901	837	849	813
Average miles per hour, trains in freight service	16.6	16.7	16.7	16.7
Pounds of coal per 1,000 gross ton-miles (including locomotives and tenders)	113	115	115	115
Average cost of coal per ton (including freight charges)	$2.54	$2.45	$2.45	$2.49
Revenue per ton-mile	$0.00942	$0.00945	$0.00946	$0.00973
Average haul per revenue ton per railroad	206.3	202.4	201.7	203.3
Number of freight-train miles	364,470,665	312,617,710	482,174,672	452,276,723
Number of passenger-train miles	266,778,973	261,434,264	391,618,851	390,889,334
Number of passenger-train car-miles	2,071,579,222	1,945,557,541	2,936,803,813	2,896,152,651
Passenger-train cars per train	8.43	8.11	8.17	8.07
Revenue per passenger per mile:				
Including commutation passengers	$0.0176	$0.0176	$0.0175	$0.0184
Excluding commutation passengers	$0.0188	$0.0192	$0.0190	$0.0202

TABLE E.—*Average number of employees and total compensation, by groups of employees, 8 months, January to August, inclusive, class I steam railways, excluding switching and terminal companies*

Groups of employees	8 months, January to August, inclusive			
	Average number of employees middle of month		Total compensation	
	1941	1940	1941	1940
I. Executives, officials, and staff assistants	12,809	11,856	$47,080,680	$46,030,270
II. Professional, clerical, and general	173,380	164,917	227,532,065	216,232,825
III. Maintenance of way and structures	227,298	204,483	197,655,004	173,346,270
IV. Maintenance of equipment and stores	307,271	277,212	374,968,634	324,272,754
V. Transportation (other than train, engine, and yard)	134,167	126,320	151,140,725	140,451,173
VI (a). Transportation (yardmasters, switch tenders, and hostlers)	13,346	12,509	22,949,743	21,185,110
VI (b). Transportation (train and engine service)	239,820	216,985	429,023,890	368,123,313
All employees	1,107,380	1,014,282	1,450,350,741	1,289,641,715

TABLE F.—*Carloads and tons of commodities originated and freight revenue, by commodity groups, calendar year 1940, class I steam railways*

Commodity groups	Number of carloads	Number of tons (2,000 pounds)	Freight revenue
Products of agriculture	3,219,591	88,821,144	$510,082,694
Animals and products	1,202,551	15,457,973	172,598,983
Products of mines	10,590,876	570,218,207	1,076,419,030
Products of forests	1,842,495	58,220,693	235,865,350
Manufactures and miscellaneous	9,555,241	262,010,272	1,435,520,403
Grand total, carload traffic	26,410,754	994,728,289	3,430,486,460
All less-than-carload freight	----------	14,692,374	247,610,899
Grand total, carload and less-than-carload traffic	----------	1,009,420,663	3,678,097,359

TABLE G.—*Summary of casualties to persons on steam railways in the United States for the years ended Dec. 31, 1940, 1939, 1938, 1937, and 1936*

Class of persons	Number of persons									
	1940		1939		1938		1937		1936	
	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured
1. Trespassers	1,977	1,765	2,234	1,943	2,229	2,094	2,515	2,289	2,666	2,410
2. Employees:										
Trainmen on duty	306	7,036	254	6,125	258	5,680	368	8,152	365	7,946
Other employees	169	920	146	863	128	801	189	1,142	228	1,075
Total employees	475	7,956	400	6,988	386	6,481	557	9,294	593	9,021
3. Passengers on trains	75	2,530	27	2,503	69	2,272	18	2,508	17	2,451
4. Travelers not on trains	5	60	11	67	6	66	9	79	15	80
5. Persons carried under contract	4	188	4	262	9	251	5	337	8	15
6. Other nontrespassers	1,908	5,059	1,480	4,247	1,590	4,338	2,014	5,642	1,875	5,306
Total, train and train-service accidents (1 to 6)	4,444	17,558	4,156	16,010	4,289	15,502	5,118	20,149	5,174	19,592
7. Casualties in non-train accidents	168	12,032	206	12,109	210	11,751	232	16,543	224	15,114
Total, 1 to 7	4,612	29,590	4,362	28,119	4,499	27,253	5,350	36,692	5,398	34,706
8. Casualties at grade crossings [1]	1,808	4,632	1,398	3,999	1,517	4,018	1,875	5,136	1,786	4,930
9. Casualties excluded from all totals [2]	128	16	130	25	150	22	152	21	152	17

[1] Included in total for items 1 to 6, and distributed under various heads, chiefly item 6.
[2] Figures relate to suicides, persons mentally deranged, and persons attempting to escape custody.

TABLE H.—*Revenues and expenses of class I [1] motor carriers of property for the calendar year 1940 compared with those of the same carriers for 1939 [2]*

Item	Total carriers reported	
	1940	1939
Number of carriers represented	1,093	1,093
Operating revenues:		
Freight revenue—Common carrier	$396,531,908	$350,468,060
Freight revenue—Contract carrier	73,548,562	67,439,111
Miscellaneous terminal revenue	1,156,853	990,096
Other operating revenue	3,307,015	3,212,804
Total operating revenues	474,544,338	422,110,071
Operating expenses:		
Equipment maintenance and garage expense	48,086,883	44,259,383
Transportation expense	175,079,115	155,296,848
Terminal expense	78,415,669	63,658,813
Sales, tariff, and advertising expense	16,546,398	13,660,680
Insurance and safety expense	25,093,143	23,436.830
Administrative and general expense	45,430,825	40,908,924
Total operation and maintenance expenses	388,652,033	341,221,478
Depreciation expense	20,291,096	19,331,593
Amortization chargeable to operations	85,917	107,971
Operating taxes and licenses	34,316,202	28,885,620
Operating rents—net	10,280,108	11,984,758
Total expenses	453,625,356	401,531,420
Net operating revenue	20,918,982	20,578,651

[1] Class I motor carriers are those having average gross operating revenues of $100.000 or over annually; the total annual revenues of which are about half of the grand total for all motor carriers whose rates and services are subject to the jurisdiction of the Interstate Commerce Commission.

[2] This table includes 962 intercity carriers and 131 carriers the services of which are predominantly local in character. The table does not include the reports of 47 carriers that failed to furnish comparable figures for 1939. The total figures for these 47 carriers amounted to the following for the year 1940: Operating revenues, $10,134,238; operation and maintenance expenses, $7,706,994; other expenses, $1,893,856; total expenses, $9,600,850; net operating revenue, $533,388.

TABLE I.—*Revenues and expenses of class I motor carriers of passengers for the calendar year 1940 compared with those of the same carriers for 1939 [1]*

Item	Total carriers reported	
	1940	1939
Number of carriers represented	201	201
Operating revenues:		
Passenger revenue	$141,736,180	$134,005,645
Special bus revenue	6,536,528	6,317,625
Baggage revenue	59,150	60,370
Mail revenue	348,200	334,201
Express revenue	1,896,591	1,787,942
Newspaper revenue	719,783	689,874
Miscellaneous station revenue	1,145,564	960,189
Other operating revenue	762,506	566,529
Total operating revenues	153,204,502	144,722,375
Operating expenses:		
Equipment maintenance and garage expense	23,711,841	21,505,968
Transportation expense	43,041,451	39,413,260
Station expense	11,070,964	9,989,142
Traffic, solicitation, and advertising expense	5,534,564	5,240,812
Insurance and safety expense	6,644,136	6,603,269
Administrative and general expense	10,383,175	9,276,629
Total operation and maintenance expenses	100,386,131	[2] 92,404,992
Depreciation expense	14,185,579	12,668,490
Amortization chargeable to operations	67,966	62,932
Operating taxes and licenses	15,512,178	14,651,775
Operating rents—net	4,310,932	4,390,092
Total expenses	134,462,786	124,178,281
Net operating revenue	18,741,716	20,544,094

NOTE.—Class I motor carriers are those having annual gross operating revenues of $100,000 or over.

[1] This table covers both intercity and local or suburban carriers.

[2] Includes $375,912 not distributed by primary operation and maintenance accounts.

APPENDIX D

LIST OF REPORTED RATE AND VALUATION CASES

[Volumes included: 241 (balance); 243; 245; 246 (part); 23 M. C. C. (balance); 24 (balance); 26, 27; 28; 29 (part); 30 (part); 49 Val. Rep. (part).]

Adams Motor Service, Contract Charges, Chicago and Mo., 29 M. C. C. 259.
A. D. Cook, Inc., *v.* Baltimore & O. R. Co., 241 I. C. C. 681.
A. E. Staley Mfg. Co. Terminal Allowance, 245 I. C. C. 383.
Agricultural Implements to Craig, Colo., 245 I. C. C. 349.
Agricultural Implements within the South, 245 I. C. C. 153.
Albany Packing Co., Inc., *v.* Atchison, T. & S. F. Ry. Co., 245 I. C. C. 741.
Alcohol to Wisconsin Points, 241 I. C. C. 433.
All Freight between Los Angeles and Albuquerque, 28 M. C. C. 161.
All Freight between Portland, Oreg., and Seattle, Wash., 28 M. C. C. 55.
All Freight, Chicago and St. Louis to Santa Rosa, N. Mex., 243 I. C. C. 517.
All Freight from and to Lincoln and Omaha, Nebr., 26 M. C. C. 634.
All Freight from Chicago and St. Louis to El Paso, Tex., 28 M. C. C. 727.
All Freight from Eastern Ports to the South, 245 I. C. C. 207.
All Freight from Salt Lake City, Utah, to Boise, Idaho, 245 I. C. C. 57.
Allowance, Trucking Shingles to Northern Pac. Ry. Points, 245 I. C. C. 463.
Aluminum to Central Territory, 241 I. C. C. 305.
American Liberty Pipe Line Co., 49 Val. Rep. 356.
American Tar Products Co. *v.* New York Central R. Co., 245 I. C. C. 289.
Animal Trap Co. of America *v.* Erie R. Co., 243 I. C. C. 171.
Anthracite to New York Points, 243 I. C. C. 572.
Anthracite to Poughkeepsie, N. Y., 245 I. C. C. 7.
Antifreeze Preparations in Official Territory, 245 I. C. C. 694.
Arkell & Smiths *v.* Atchison, T. & S. F. Ry. Co., 243 I. C. C. 693.
Arkell & Smiths *v.* Carolina, C. & O. Ry., 241 I. C. C. 334.
Arthur Serra & Co. *v.* Alton & S. R., 245 I. C. C. 356.
Ashland Coal & Ice Co. Inc., *v.* Atlantic Coast Line R. Co., 241 I. C. C. 121.
Asphalt from Port Wentworth, Ga., 243 I. C. C. 275.
Asphalt to Cincinnati, Ohio, 243 I. C. C. 15.
Asphalt Rock from Oklahoma and Texas to Mississippi, 246 I. C. C. 219.
Associated Distributors *v.* Bamberger Electric Ry. Co., 245 I. C. C. 761.
Atkinson Motor Freight, Inc., Commodities, N. J., N. Y., and Pa., 28 M. C. C. 147.
Atlantic Lbr. Corp. *v.* Southern Pac. Co., 241 I. C. C. 461.
Auburn Mills *v.* Chicago & A. R. Co., 243 I. C. C. 235.
Automobiles from Buffalo, N. Y., 241 I. C. C. 459.
Automobiles from Evansville, Ind., to the South, 245 I. C. C. 339.
Automobiles from Kansas City, Mo., 245 I. C. C. 711.
Automobiles from Memphis to Arkansas and Louisiana, 245 I. C. C. 334.
Automobiles from the East to Louisiana and Arkansas, 245 I. C. C. 785.
Automobiles from Wisconsin to Minnesota, 246 I. C. C. 114.
Baltimore & O. Rates—Cincinnati, Ohio, 245 I. C. C. 697.
Barre Forwarding Co. *v.* Montpelier & W. R. R. 243 I. C. C. 296.
Beans from Billings, Mont., to South Dakota, 30 M. C. C. 125.
Beer and Ale from Cincinnati to N. C. and S. C., 28 M. C. C. 662.
Bell General Transit Corp., 49 Val. Rep. 414.
Belleville-St. Louis Coach Co. *v.* St. Clair Bus Line Co., Inc., 27 M. C. C. 34.
Benner, Minimum Charges, Winchester, Va., to D. C. and Md., 27 M. C. C. 777.
Berries, Burlington County, N. J., to Philadelphia, 28 M. C. C. 156.
Beverage Carriers, Returned, to Points in Indiana, 245 I. C. C. 1.
Bituminous Coal to Erie, Pa., 243 I. C. C. 758.
Bituminous Coal to Mobile, Ala., 241 I. C. C. 395.

Gasoline and Kerosene from Louisiana to Natchez, Miss., 245 I. C. C. 305.
Gasoline from Louisiana to Tennessee, 243 I. C. C. 749.
Gasoline from Mobile, Ala., to Points in Mississippi, 246 I. C. C. 5.
Gasoline to Gibbs and Union City, Tenn., 241 I. C. C. 441.
Gasoline within Central Territory, 245 I. C. C. 677.
Gasoline within Illinois Territory, 241 I. C. C. 429.
General Candy Corp. *v.* Reading Co., 243 I. C. C. 687.
General Foods Corp. *v.* Louisville & N. R. Co., 246 I. C. C. 142.
General Motors Corp. *v.* Delaware L. & W. R. Co., 245 I. C. C. 685.
General Water Heater Corp. *v.* Pacific Electric Ry. Co., 245 I. C. C. 603.
George A. Hormel & Co. *v.* Chicago, M., St. P. & P. R. Co., 245 I. C. C. 745.
Glass Milk Bottles, Elmira, N. Y., to Md., Pa., and W. Va., 29 M. C. C. 191.
Grain and Grain Products, 243 I. C. C. 83.
Grain and Grain Products from Points in Iowa, 245 I. C. C. 783.
Grain from Oklahoma to Memphis, Tenn., 246 I. C. C. 207.
Grain from River Crossings to Florida, 246 I. C. C. 53.
Granite, Vermont to Trunk Line and New England Points, 243 I. C. C. 555.
Great Lakes Coal & Coke Co. *v.* Atchison, T. & S. F. Ry. Co., 243 I. C. C. 379.
Groceries to Texas, 241 I. C. C. 755.
Groceries, Twin Cities and North and South Dakota, 29 M. C. C. 265.
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Maywood Chemical Works *v.* Erie R. Co., 245 I. C. C. 139.
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Michigan Bean Co. *v.* Pere Marquette Ry. Co., 246 I. C. C. 50.
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Mineral Water, Hot Springs to North Carolina Ports, 245 I. C. C. 535.
Minimum Weights on Beans from Transit Stations, 243 I. C. C. 167.
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Missouri Bag Co. *v.* Southern Ry. Co., 243 I. C. C. 282.
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Petroleum from Billings and Laurel, Mont., 241 I. C. C. 739.
Petroleum from Kansas to Grand Island and Loup City, Nebr., 27 M. C. C. 745.
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Petroleum Products between W. T. L. Points, 243 I. C. C. 7.
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Petroleum Rail Shippers' Assn. *v.* Alton & S. R., 243 I. C. C. 589.
Petroleum, Superior, Nebr., to Northeastern Colorado, 27 M. C. C. 324.
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Phosphate Export Assn. *v.* Atlantic Coast Line R. Co., 243 I. C. C. 525.
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Poles, Piling, and Ties to Wilmington, N. C., 243 I. C. C. 273.
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Sioux City Term. Ry. Switching, 241 I. C. C. 623.
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Snoqualmie Falls Lbr. Co. Terminal Allowance, 245 I. C. C. 112.
Soap and Soap Products to Norfolk, Va., 245 I. C. C. 359.
South Chicago Coal & Dock Co. *v.* Belt Ry. Co. of Chicago, 243 I. C. C. 23.
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Standard Oil Co. of Louisiana *v.* Abilene & S. Ry. Co., 241 I. C. C. 599.
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Status of Public Stockyard Companies, 245 I. C. C. 241.
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Sulphate of Alumina to Plymouth, N. C., 246 I. C. C. 258.
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Sulphur to Erie, Pa., 246 I. C. C. 81.
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Switching at Richmond, Va., 245 I. C. C. 293.
Switching Fruits at Texas Border Points, 246 I. C. C. 17.
Switching Rates in Chicago Switching District, 243 I. C. C. 461.
Terminal Allowances at Saltville, Va., 241 I. C. C. 355.
Terminal Grain Corp. *v.* Chicago, B. & Q. R. Co., 243 I. C. C. 685.
Texas Mexican Ry.—Flour Bluff Extension Rates, 245 I. C. C. 315.
Tex-O-Kan Flour Mills Co. *v.* Abilene & S. Ry. Co., 241 I. C. C. 243.
Tex-O-Kan Flour Mills Co. *v.* Atchison, T. & S. F. Ry. Co., 245 I. C. C. 789.
Thornton Quarries Corp. *v.* Chicago & E. I. Ry. Co., 246 I. C. C. 131.
Tin Cans from Chicago, Ill., to Charleston, W. Va., 243 I. C. C. 717.
Tin Plate, Alabama, Illinois, Indiana, and Missouri to Texas, 243 I. C. C. 487.
Tires between Points in the South, 243 I. C. C. 767.
Tobacco, S. C., to Charleston, Savannah, and Wilmington, 24 M. C. C. 770.
Tobacco to Houston, Tex., 243 I. C. C. 98.
Traffic Bureau, Lynchburg Chamber of Commerce *v.* Aberdeen & R. R. Co., 241 I. C. C. 487, 245 I. C. C. 49.
Transit Commodity Rates in the South, 243 I. C. C. 522.
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Transit on Tallow at Tacoma, Wash., 245 I. C. C. 733.
Tri-State Pipe Co. *v.* Abilene & S. Ry. Co., 241 I. C. C. 698.
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Truscon Steel Co. *v.* Chesapeake & O. Ry. Co., 241 I. C. C. 638.
Tuco Products Corp. *v.* Bush Term. R. Co., 241 I. C. C. 591.
Union Wire Rope Corp. *v.* St. Louis-S. F. Ry. Co., 243 I. C. C. 354.
United Carbon Co. *v.* Burlington-R. I. R. Co., 243 I. C. C. 51.
United Cartage Co., Minimum Charges on Beverages, 28 M. C. C. 468.
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Valley Compress Co. *v.* Southern Pac. Co., 246 I. C. C. 89.
Valley Steel Products Co. *v.* Atchison, T. & S. F. Ry. Co., 243 I. C. C. 509.

APPENDIX E

DIGEST OF FEDERAL COURT DECISIONS

A discussion of court decisions involving injunctions to restrain enforcement of orders of this Commission and of decisions relative to criminal violations of the law can be found in the text of this report. The decisions abstracted herein involve questions of regulation which are concerned with, or closely related to, matters arising before this Commission.

ACCOUNTING METHOD

Chicago & N. W. R. Co. v. *Commissioner of Internal Revenue*, 114 Fed. (2d) 882, Seventh Circuit.—The railroad having elected through a long period of years to employ the retirement method for all of its property treated as a unit, cannot now claim as a matter of right the privilege of retroactively applying the straight-line method of accounting for depreciation in respect to certain items of property for certain taxable years.

The retirement method of accounting is permissible under the Revenue Act for determining the amount of deduction for depreciation in the case of railroads.—Id.

ADMINISTRATIVE PROCESS

United States v. *Morgan*, 313 U. S. 409.—Although the administrative process has had a different development and pursues somewhat different ways from those of courts, they are to be deemed collaborative instrumentalities of justice and the appropriate independence of each should be respected by the other.

Fleming v. *Montgomery Ward & Co.*, 114 Fed. (2d) 384, Seventh Circuit.—When Congress has created an administrative agency with power to regulate and supervise the conduct of an industry, and authorized it to inspect books and records to enable it to perform its functions, the same principles that have applied to inspection of books and records by the Interstate Commerce Commission are applicable to inspection by such agencies.

Powhatan Mining Co. v. *Ickes*, 118 Fed. (2d) 105, Sixth Circuit.—Administrative tribunals are not bound by the common-law rules of evidence, but the more liberal the practice in admitting testimony, the more imperative it is to preserve the essential rules of evidence by which rights are asserted or defended.

The exhibits (tabulations of the division based on invoices filed with it) are admissible under the broad rule that administrative agencies are not bound by the ordinary rules of evidence. All the more scrupulous should be the effort on the part of the agency to extend to the litigant the right to test evidence thus admitted by the fullest possible cross-examination.—Id.

Carolina Freight Carriers Corp. v. *United States*, 38 Fed. Supp. 549, western district of North Carolina.—The rule is well settled that administrative practice or interpretation has no weight where the language of the statute is unambiguous and such practice or interpretation is unreasonable and clearly inconsistent with it.

Gregg Cartage & Storage Co. v. *United States*, — Fed. Supp. —, northern district of Ohio.—The Commission is an administrative agency and its proper function requires a different procedure from that of courts of law.

AFFIRMATIVE AND NEGATIVE ORDERS

N. E. Rosenblum Truck Lines, Inc. v. *United States*, 36 Fed. Supp. 467, eastern district of Missouri, eastern division.—Order denying application for authority to operate, made under the "grandfather" clause is reviewable. The judicial function is limited to examination of the record to ascertain whether there is substantial basis in the evidence for the Commission's conclusion.

ALASKA RAILROAD

Berger v. *Ohlson*, 120 Fed. (2d) 56, Ninth Circuit.—The Alaska Railroad is not a corporate or any other legal entity. It is a name only. The sole owner of the railroad and its terminals, as well as the Terminal Reserve, is the United States. The public of the city of Anchorage had a mere license to use the city dock, and the United States had a right to terminate the use of the dock.

United States v. *DeBack*, 118 Fed. (2d) 208, Ninth Circuit.—Under act of March 12, 1914, 38 Stat. 305, as amended, the Alaska Railroad is owned and operated by the United States.

By private act, Aug. 26, 1937, appellee was authorized to sue the United States for damages growing out of injuries while a passenger on the Alaska Railroad, owned and operated by the United States.—Id.

ANTITRUST ACTS

United States v. *Local 807 of International Brotherhood*, 118 Fed. (2d) 684, Second Circuit.—In absence of any evidence of concerted agreement to fix the price of trucking or of commodities carried, or that action of the union or its members had affected such prices, the union and its members, truck drivers, forcing operators of trucks entering New York City from other States to pay union wages for full day's work for each truck entering the city, regardless of whether the operators accepted services of the union drivers, for driving and unloading within the city, were not guilty of conspiracy to violate the Sherman Antitrust Act.

Boro Hall Corp. v. *General Motors Corp.*, 37 Fed. Supp. 999, southern district of New York.—In order to predicate a suit on the antitrust laws, interstate commerce must be directly and materially involved.

United States v. *Association of American Railroads*, 36 Fed. Supp. 225, District of Columbia.—Questions in controversy in action by the United States charging the Association of American Railroads and railroads with a combination and conspiracy to restrain interstate commerce, alleging adoption by the association of resolutions embodying agreement by defendant railroads to refrain from establishing through rates facilitating interchange between railroads and motor carriers, do not become moot on rescission; dismissal denied.

BANKRUPTCY ACT

In re Chicago & E. I. Ry. Co., 121 Fed. (2d) 785, Seventh Circuit.—Congress intended to permit those holding claims for damages caused by operation of trains to sue in any court of competent jurisdiction. A judgment validly entered by such court of competent jurisdiction is binding upon the court of bankruptcy when a claim based upon such judgment is presented.

Provision for suits for damages caused by operation of trains, busses, applies to causes of action arising after bankruptcy adjudication as well as to those arising prior thereto.—Id.

While it would be better for one about to sue a debtor railroad to secure consent of the district court to maintenance of the suit in another court, such consent is not required in action for damages caused by operation of trains.—Id.

"Competent jurisdiction" does not under subsection (j) have reference to jurisdiction based upon consent of the court of bankruptcy. It refers to the jurisdiction of the court as fixed by the laws of the State wherein the accident occurred or where the suit is brought.—Id.

The district court having authorized the trustee to defend the suit in the State court, and payment of the costs and of the appeals which followed, its action constituted implied consent to maintenance of the suit, although the trustee did not remain a nominal party to the suit.—Id.

Decree that judgment in the State court did not constitute a liquidation of the claim for the purpose of proof thereof, directing that the claim be sent back to the special master for hearing on the merits apart from the judgment itself and for further report, was a final decree, at least in part, and therefore under any circumstances is appealable.—Id.

Under sec. 24, (§47 USC) an order is appealable even though it is not a final order.—Id.

Congress favored claimants as a class whose causes of action arise out of personal injuries traceable to the alleged negligence of a railroad. It is not for the court to pass judgment on the wisdom of such a distinction.—Id.

In re Chicago & N. W. Ry. Co., 121 Fed. (2d) 791, Seventh Circuit.—Neither the scheme of the legislation nor the words of the statute justify the conclusion that the court was to delegate its judicial powers to the Commission and merely sign the orders which the Commission advised, or approve other orders which the Commission made. Each was given express powers, each a jurisdiction or function of its own.

In the field wherein it exercises the powers expressly given it, the findings of the Commission are well-nigh conclusive, though its orders are not unassailable if wholly lacking in evidentiary support. But where its findings relate to plans of reorganization, earning power of the debtor, its operations, having in view the greatest service to the public and the greatest net earnings for its security holders, its findings should be and are accepted almost as verities by the courts.—Id.

The exclusive jurisdiction of all matters relating to the estate of the debtor is in the court. The Commission's function is to prepare the data, study it, recommend a plan, which must be ultimately approved by the court, acting judicially. In some matters the Commission acts as a master who hears and makes findings, in others, it exercises a veto power on the district court.—Id.

The court may authorize, for purpose of testing the validity of the plan, which eliminates all stockholders, the costs of printing the record on appeal, out of the debtor's estate, in absence of express statutory denial of authority.—Id.

Order of the Commission denying petition for an allowance for appeal from approval of the plan is not reviewable by the court, save perhaps when there is a total lack of evidence to support the order.—Id.

A plan which entirely eliminated security holders whose rights before that plan was adopted were clear, and which provides that the eliminated security holders should not appeal, could not be sustained. They must be given the right to review, by appeal or otherwise.—Id.

In re Chicago & N. W. Ry. Co., 119 Fed. (2d) 971, Seventh Circuit.—The State taxes became a lien on the property 3 months before reorganization proceedings were instituted. They drew interest at 1 percent per month after due and payable, and the State court construed such charges to be a penalty and not interest. The trustee could have prevented the accrual of such penalty. Nonpayment by the trustee caused the penalty accrual. The trustee is liable.

In re Chicago, M., St. P. & P. R. Co., 121 Fed. (2d) 371, Seventh Circuit.—The act is not unconstitutional by reason of its failure to give a right to judicial review of the action and ruling of the administrative body in fixing maximum limits of attorney's fees to be allowed out of the debtor's estate.

The power of Congress to deal with bankruptcy carries with it the right to select the tribunal, even going outside of courts, to administer the debtors' estates.—Id.

The act, making provision for compensation by permitting the Commission to determine the reasonableness and the value of services rendered thereunder, violates no constitutional rights.—Id.

The act grants the Commission the power to fix the maximum fee for each counsel, and it may set the maximum so low as to deny any compensation to individual attorneys claiming to have rendered compensable services in bankruptcy proceedings.—Id.

The court correctly held it was powerless to allow appellants any sum when the Commission had denied them compensation on the basis of its finding that the services rendered were of no value to the estate, since if the services were of no value, it cannot be said that refusal of allowance therefor was arbitrary or capricious.

Chicago, R. I. & P. Ry. Co. v. *City of Owatonna*, 120 Fed. (2d) 226, Eighth Circuit.—Possession of property in the custody of a court cannot be affected by proceedings in another court.

When there is possession of property in a court of bankruptcy, that court has exclusive control over determination of all questions respecting title, possession, and control of the property.—Id.

There is no power in the officers of a bankruptcy court to affect the exclusive jurisdiction of a bankruptcy court whether by waiver, estoppel, or laches.—Id.

Consent of the bankruptcy court was a jurisdictional prerequisite to initiation and conduct of condemnation proceedings involving property of railroad in bankruptcy reorganization. Trustees and railroad company were entitled to enjoin taking of the land in absence of such consent.—Id.

Reconstruction Finance Corporation v. *Missouri-K.-T. R. Co.*, 122 Fed. (2d) 326, Eighth Circuit.—When the injury occurred during the receivership operation, the statute was not needed to give the employee's claim the status of an operating expense. There are such superior and compelling equities in an employee's claim for personal injuries as to entitle a court of equity to give it priority over the general operating expenses of commercial risk.

Taxes accruing during a railroad receivership may properly be preferred over all other claims except judicial costs. No statute is necessary to create the priority, which may be based wholly upon a judicial recognition of governmental (State, Federal, municipal) need and prerogative.—Id.

Mere failure of public officers charged with the duty of collecting taxes, to make application annually to the court for payment of taxes accruing during a railroad receivership, is not such a circumstance as will defeat the State's right to priority for the accumulated taxes.—Id.

Any priority which it was intended that the Finance Corporation's receiver certificates were to have over subsequent operating expenses should have been clearly indicated in the court order which authorized their issuance.—Id.

Preexisting debts of a railroad for expenses currently and reasonably necessary to its ordinary operation as as going concern, including money loaned to the receiver with court approval, for payment of indebtedness entitled to a preference, incurred within a limited period prior to receivership, may be allowed preferential payment.—Id.

As to priority allowed the Finance Corporation's funds used to pay State taxes, levied for the year preceding the receivership but which by special extension statute, had been made nondelinquent until appointment of the receiver, the court could properly permit the taxes to be accepted and treated as an obligation of the receivership, like any other taxes that might accrue during its course; could legitimately classify the receivers obligation under money borrowed to pay the taxes, on parity with other operating expenses.—Id.

In re Akron, C. & Y. Ry. Co., 117 Fed. (2d) 961, Sixth Circuit.—Assuming release by the guarantor of any claim for outlays upon $2,184,000 of Northern Ohio Ry. Co. bonds, and release of common stock representing 22.79 percent of the face amount of the settlement to appellant and other general creditors, the latter would still be in possession of warrants for 18.50 percent of the face amount of their allowed claims. Appealing creditor's interest, $35,000, is intrinsically substantial.—Id.

Van Schaick v. *McCarthy*, 116 Fed. (2d) 987, Tenth Circuit.—The court will take judicial notice of the fact that local traffic has largely been taken over by busses and trucks, and that railroads today must depend largely upon through traffic. A railway is a unit. It must be sold if at all, as a going concern. Its activities cannot be halted because its continuous, uninterrupted operation is necessary in the public interest. The act has for its main purpose the rehabilitation of the debtor. During reorganization it contemplates the continued corporate existence of the debtor, under the control and supervision of the court.

The act does not contemplate sale and liquidation or the application of earnings to the payment of mortgage securities.—Id.

Although a mortgage may give a lien on profits and income, a pledge of income does not become effective so long as the mortgagor is permitted to remain in possession of the mortgaged property and to receive and disburse the earnings; until then the earnings belong to the railroad and are subject to its control. The ordinary method of making such a lien effective is to obtain appointment of a receiver in foreclosure proceedings.—Id.

The act provides for a fair and equitable plan of reorganization and a just allocation of the securities of the reorganized company, taking into consideration not only the principal but the unpaid interest on mortgage obligations.—Id.

Expenditures for improvements should be rigidly limited to what is reasonably and necessarily required for adequate maintenance. Installation of central traffic control, automatic block signals, approved, as necessary to maintain the competitive position of the debtor, to insure it will receive its fair share of the through traffic now and in the future.—Id.

Insulation and weather-stripping yard and offices and installation of circulating coolers not so required. Disapproved.—Id.

While the Congress may not impair the obligation of contracts by laws acting directly and independently to that end, it has authority to enact legislation on the subject of bankruptcies which may operate collaterally or incidentally to impair or destroy the obligation of private contracts.—Id.

In re Chicago & N. W. Ry. Co., 114 Fed. (2d) 963, Seventh Circuit.—Order directing trustee to pay interest due on mortgages, but providing if payments are found, upon further accounting, to be greater than they should be in view of the rights of other claimants, or otherwise, payments should be charged against amounts accruing under the respective mortgages, and continuing petitions generally, was not final. Appeal therefrom was premature.

Powell v. *Link*, 114 Fed. (2d) 550, Fourth Circuit.—The act providing for preference of claims for personal injuries to employees is a remedial statute; should be liberally construed.

The term "claim" for personal injuries includes both the principal and interest thereon. The proper rate is that fixed by the applicable statute of the State wherein the judgment was obtained.—Id.

Congress had the power to make claims of employees injured in the course of their employment prior to existing lien obligations of the railway, including mortgages constituting liens upon its properties and the receivers' certificates issued under previous decrees of the district court which provided that such certificates should be secured by a paramount lien upon all the railway's fixed properties and upon its surplus earnings and income not used in maintenance and operation.

Chase National Bank v. *Mobile & O. R. Co.*, 39 Fed. Supp. 874, southern district of Alabama, southern division.—Holders of mortgages on debtor's property acquiesced in appointment of the receiver, who subsequently borrowed money from the Reconstruction Finance Corporation for operating the railroad, giving receivers' certificates pledging all the railroad property. The loan was repaid before petition was filed to have the debtor's earnings impounded. Sums repaid will not be ordered charged solely against earnings and proceeds of sale of the debtor's unmortgaged property, giving mortgageholders advantage over other creditors.

Equity favors the diligent and not the procrastinators.—Id.

In re Missouri Pac. R. Co., 39 Fed. Supp. 436, eastern district of Missouri, eastern division.—Inconsistent State laws must give way to consolidations effected under authority of the commerce or bankruptcy powers of the Federal Constitution. General offices having long been maintained at St. Louis, it is not feasible to move them notwithstanding Texas statutes to the contrary.

Under provision of subdivision (n) of the act, in absence of some modification of the decree of the State court, requiring maintenance of shops and offices at Palestine of any successor in interest to the International-G. N., either the general offices of the consolidated company must be moved thereto, or that carrier must continue to be operated separately until such time as a consolidation may be authorized under sec. 5 of the Interstate Commerce Act.—Id.

Provision for splitting up and selling separately security for any issue of bonds is not unconstitutional as depriving bondholders of their right to specific property without compensation.—Id.

Clause (3) of subsection (b) provides that the plan "may" include provisions for issuance of options or warrants to any creditor or stockholder nor otherwise provided for. The provision is permissive and not mandatory. They must have a present existing interest before the plan may make such provision for them.—Id.

While determination of value is not mandatory in every case, it is required where such a determination is necessary for any purpose. Finding of the Commission fixing capitalization of the reorganized company, based on substantial evidence as to earnings, book value, value of investments, cost of reproduction new, less depreciation, original cost of the property, and other relevant facts, is a finding of value, and fully meets the requirements of the act.—Id.

The initial duty and responsibility for consideration and approval of a plan resting with the Commission, which by training and experience is in a preferred position to consider its reasonableness and soundness, the court will give great weight to recommendations of the Commission on technical phases of the plan and concern itself primarily with the legal questions involved.—Id.

There is no provision in the act which requires that the date of the institution of the proceedings shall also be the effective date of the plan. January 1, 1940, is an appropriate effective date for the plan rather than April 1, 1933, the date of institution of the proceedings.—Id.

The plan will not be modified because the Railroad Credit Corporation fears bonds it is to receive would not be saleable at par, its claim having been given 100 percent treatment by allotment to it of first-mortgage bonds.—Id.

Under Commission provision that the court may cure any defect, supply any omission, or reconcile any inconsistency, to carry out the plan, the court has

authority to continue the corporate organization of the present International-G. N., or to provide for its assets to be taken over by a separate company, notwithstanding language in the plan respecting consolidation into one reorganized company.—Id.

Contingency under which the plan provides that the International may be excluded from the consolidation may not occur; finding it is compatible with the public interest is not equivalent of finding that such inclusion is required by the public interest. Under the Commission's finding that it would be generally beneficial, the consolidation should be consummated insofar as legally and practically feasible.—Id.

As to objection by holders of first-mortgage bonds of the International-G. N. to acceptance of second-mortgage bonds of the reorganized company, if the International is to be included as a part of the reorganized company, the treatment of its security holders must be considered in relation to the treatment of all other issues.—Id.

Under provision that when any class of creditors rejects the treatment accorded, the plan may be executed by sale, et cetera, the property need not be sold as a whole.—Id.

Since the stockholders' interest has been extinguished there is no basis for the issuance of options or warrants to them, which is provided as a permissive, not a mandatory treatment.

The act does not require that a perfect plan be accomplished. There is no mathematical formula that can be followed to reach a perfect result. Nor is it given to the court to say that in its opinion some other or different plan might have been better than the one before it, if that plan is essentially sound.—Id.

In re Western Pac. R. Co., 38 Fed. Supp. 877, northern district of California, southern division.—Trustees instructed not to make any payment on account of trustees' certificates, $10,000,000 issued to the Reconstruction Finance Corporation for its loan, for such action might imperil the Commission's plan of reorganization pending determination on appeal, and the $6,651,925 cash on hand is no more than sufficient for that purpose and the proper maintenance and operation of the railroad.

Brotherhood of Locomotive Engineers v. *Chicago, M., St. P. & P. R. Co.*, 34 Fed. Supp. 594, eastern district of Wisconsin.—Intervention by applicants, seeking construction of mediation agreement, will not indirectly delay or prejudice the adjudication of the rights of the original parties, therefore motion to intervene will ge granted.

In re Louisiana & N. W. R. Co., 36 Fed. Supp. 636, southern district of New York.—A plan which eliminates income debentures and replaces old bonds with new first mortgage bonds for 25 percent of the old issue and common stock for 75 percent, is not fair or equitable to bondholders, for to the extent that stock is substituted for income debentures, there is a loss to bondholders of the distributable earnings because the company is deprived of the benefit of a tax deduction for all interest on income debentures. Principal amount of income debentures limited to $351,730.

In re Erie R. Co., 37 Fed. Supp. 237, northern district of Ohio, eastern division.—Section 77 prescribes no precise formula for determining the value of property used in railroad operation. Exercise of a reasonable judgment is involved.

Inasmuch as the problem of valuation is one for the Commission, and not only involves matters of opinion, but also a matter affecting the public interest, which comes within the primary if not the exclusive jurisdiction of the Commission, the Commission's determination of the value of the Erie and Chicago & Erie for reorganization purposes is conclusive unless it applied improper standards of valuation or its finding is unsupported by evidence.—Id.

Conclusion that evaluation of the property by the Commission is conclusive if proper standards are used and evidence supports the findings is not inconsistent with the view that the court is required to exercise an independent judgment in determining that the plan complies with the requirements of the act.—Id.

Although it is the function of the court, as well as the Commission, to approve a sound capital structure, determination of a proper amount of fixed-interest bonds, as well as determination of the relationship between the total capitalization and both the fixed-interest debt and the total debt, are matters affecting the public interest, therefore come within the primary, if not the exclusive, jurisdiction of the Commission.—Id.

Any objection to the form or adequacy of the Commission's finding could, and should, have been raised by the objector before the Commission by petition to modify the report, as provided in section 77 (d).—Id.

The court has no authority comparable to that of the Commission to formulate a plan of reorganization. Its power is to approve or disapprove a plan. The court has a duty to exercise independent judgment in determining whether the plan complies with requirements of the statute. The Commission is clothed with certain functions, one of which is to determine, if necessary, value of any property.—Id.

The Commission's finding of permissible total capitalization, when considered in conjunction with the plan as a whole and the proposed capital structure, is tantamount to a finding of value, definitely reflects the Commission's appraisal of the assets of the carriers for reorganization purposes.—Id.

There is no objection to there being a ruling by the court on the plan prior to determination of allowances.—Id.

Contention that stockholders should not receive anything from the company assets without providing that claims of unsecured creditors be paid in full, overruled. Plan adequately recognizing right of unsecured creditors to priority over present stockholders is approved.—Id.

Under section 77 the court may order suspension of the right of a creditor to enforce its lien or property interest until after final decree. Death claim is not entitled to priority or preferential payment by virtue of State statute, which fails to create any lien or other property interest in favor of payment of a claim for damages, or to provide such claim is entitled to priority over liens of railroad mortgages, if not reduced to judgment.—Id.

Priority of claim for death growing out of operation of train in New Jersey is governed by New Jersey statute, not by Ohio statutes, where no action against the railroad company was pending. That the claim was liquidated by agreement a few days prior to commencement of reorganization proceedings and is admitted by the trustee is not sufficient reason to give it priority over liens of existing mortgages if it is not otherwise entitled to priority.—Id.

Reorganization managers have no authority to reject or disaffirm leases. That may be done only by the debtor trustees or order of the court or in the plan. If a lease is rejected in accordance with provisions of the statute, the reorganization managers will have power to represent the Erie estate and the reorganized company in making a new lease, or other arrangements with respect to property or securities of the lessor.—Id.

Because of the junior-lien position of the convertible bonds, requirements of a fair plan preclude any increase in the allotment of fixed-interest or income bonds to the holders of convertible bonds without also providing for an increase in the amounts of fixed-interest and income securities to be distributed to other interests which are entitled to receive such new securities.—Id.

The question of rate of interest payable on the bonds issued under New York & Erie third mortgage has no effect on determination of fairness of the plan or whether it should be approved.—Id.

There is no requirement as a matter of law that new securities issued in a reorganization will immediately earn an amount equivalent to the interest on the old securities, or that, immediately following reorganization, such new securities will attain a market value equivalent to the face amount of the claim they represent, before holders of junior securities may participate.—Id.

It is recognized that the interest of any class of creditors can be preserved by the issuance on equitable terms of new securities.—Id.

Priorities may be recognized by allocation of the same class of security to different classes of existing security holders on a quantitative basis.—Id.

Plan is not unfair on the ground that it fails to preserve priorities between different classes of creditors and stockholders merely because it provides for distribution of new common stock, in different amounts, to refunding bondholders, unsecured creditors, and present stockholders. The principle that priorities may be recognized by allocation of the same class of security to different classes of existing security holders on a quantitative basis is recognized by the Supreme Court (271 U. S. 445).—Id.

Holders of convertible bonds occupy a junior-lien position. The junior-lien position must be recognized.—Id.

The coal company's value was adequately recognized, consideration was given to exhaustion of the coal supply, and the effect of such exhaustion on the railroad. Therefore the stock of the coal company need not be distributed among holders of convertible bonds secured by pledge of the coal company's stock.—Id.

The segregation formula does not allow for proper terminal allowances on traffic from the Erie & W. V. Segregation earnings and ratio-of-coverage comparisons made by the objectors cannot properly be used as a rigid yardstick in determining value for allotting new securities to the holders of convertible bonds.—Id.

Collateral first-lien interests of the holders of convertible bonds of the coal company and the Erie & W. V. R. are not of sufficient value to entitle such bondholders to priority over the general-lien bonds.—Id.

The rule that stockholders' interest in the property is subordinate to the rights of creditors does not require the impossible, and make it necessary to pay creditors in cash, or its immediately realizable equivalent, before stockholders may be permitted to participate in the reorganized company.—Id.

Adequate provision must be made for all classes of creditors before stockholders may be permitted to participate in the reorganized company.—Id.

That the plan provides stockholders may exercise warrants for purchase of additional shares of new common stock at any time before Jan. 1, 1945, is not objectionable on the ground of length of the period.—Id.

In re Western Pac. R. Co., 34 Fed. Supp. 493, northern district of California, southern division.—Determination of the amount and character of the capitalization, a legislative function affecting the public interest, is exclusively within the province of the Commission. The only qualification, if any, is that the court shall independently determine whether in the exercise of its jurisdiction, the Commission has acted fairly, and not arbitrarily.

Determination of the questions relating to distribution of new securities, including legal priorities and allocations, involves private rights and is a judicial function, within the province of the court, but when they had not been adjudicated, it became the duty of the Commission to determine them preliminarily for the purpose of considering the plans before it.—Id.

A railroad corporation may come within the terms of the Bankruptcy Act although it is not insolvent if it is unable to meet its debts as they mature.—Id.

Exclusion of certain stockholders from participation in the reorganization was not invalid and inequitable and contrary to the law of the land, as the Commission's finding was made in accordance with the statute, that the equity of those stockholders was without value.—Id.

In re Chicago, M., St. P. & P. R. Co., 36 Fed. Supp. 193, northern district of Illinois, eastern division.—It was intended by the law that the bankruptcy court and the Commission should cooperate to the end that a fair and equitable plan might be provided. The United States Supreme Court has not yet determined what weight should be given by the court to the findings and conclusions of the Commission. The court has power to correct errors of law into which the Commission may have fallen, and to set aside findings of fact not supported by the record, conclusions which violate constitutional rights.

Valuation is not made mandatory by the statute. Value as represented by original cost or reproduction cost with proper adjustment for depreciation, additions, betterments, are not the only elements to be considered. Value in terms of furnishing support for a sound and workable financial structure must also be considered.—Id.

Claims for personal injury do not constitute current expense of ordinary operation necessarily incurred to keep the railroad a going concern.—Id.

This section extends priority claims for personal injuries to employees, not nonemployees.—Id.

Not only is there no requirement in section 77 that the effective date be coincident with date of filing of the petition, but subsection (e) permits inference that it was contemplated the effective date should be the date to which findings of the commission relate.—Id.

A plan which was not submitted to the Commission is not before the court for consideration.—Id.

The advantage resulting from elimination of divisional mortgages is obvious. Many of the difficulties arising in current reorganization proceedings are attributable in large measure to existence of many mortgages on parts of a system. The desire of the Commission to eliminate that objection is commendable.—Id.

Reasonable provision for additions and betterments to be paid out of earnings does not violate any rights of the security holders.—Id.

Rule allowing receiver a period within which to determine whether he shall affirm or disaffirm existing lease, and that his action relates back to date of

institution of the proceedings, was designed to protect the receiver or trustee; as a rule those disaffirmed are those which are unprofitable. In a given situation there may be special equities which will afford a basis for a different result.—Id.

Contention that if the Terre Haute lease is to be rejected, a definite decision to that effect must be made prior to submission of the plan to the debtor's creditors, is not supported by proper interpretation of the statute.—Id.

The statute does not require resubmission after confirmation of the plan to a lessor under a lease which the plan provides shall be disaffirmed.—Id.

Property cannot be scrapped except through abandonment pursuant to appropriate order by the Commission.—Id.

Fixing the effective date as Jan. 1, 1939, on petition filed June 29, 1935, and including interest to the effective date on all mortgage claimants, except holders of adjustment mortgage bonds as to whom interest was included to date of filing of the petition, was proper. That effective date must be the date when proceedings were initiated and interest accruing since should not be added, overruled.—Id.

The Commission is charged with the duty not only of determining the amount of fixed-interest debt of the new company but also the contingent-interest debt, and it was in the public interest that the contingent-interest debt be such that the total debt should bear a proper relation to the total capitalization and such as to make payment of contingent interest a probability and of dividends a reasonable prospect, at least on the preferred stock.—Id.

The profitable character of the Terre Haute is dependent upon continued operation of the rest of the system. It is neither unfair nor unreasonable nor inequitable that the Terre Haute bondholders be expected to make some sacrifice to maintain continued operation of both properties upon a basis reasonably assured by prospective earnings.—Id.

Disaffirmance provided in the plan should not relate back to the beginning of the proceedings even if the plan itself had not expressly provided that the disaffirmance should become effective as of the date of the court's finding that the Terre Haute bondholders disapproved the provisions submitted to them.—Id.

In re Chicago & N. W. Ry. Co., 35 Fed. Supp. 230, northern district of Illinois, eastern division.—Since severance value is approved as the basis for allocation of securities to bondholders, new fixed-interest bonds should not be allocated to an extent which will capitalize the dollar severance value. Capitalization of the part of the system earnings ascribable to the line partly in fixed-interest-bearing securities, partly in contingent-interest-bearing securities, partly in preferred stock, and partly in common stock, is reasonable and fair.

The value of a bridge or cut-off line, which originates or terminates but little traffic, as basis for allocation of securities to bondholders, is determinable by a severance value study. A segregation study reflects the earnings on traffic as it actually moves and ignores the fact that control of the traffic was not in the hands of the bridge or cut-off over which it moved, for convenience of the system.—Id.

It was reasonable and fair for the Commission to adopt a mean between differing experts in determining the year's earnings on the line, without allowing interest on the estimated cost of grade separation, not allowing for absence of grade crossings on the alternate route, which was not expressible in dollars and cents.—Id.

The plan is not objectionable for failing to give any weight to earnings of the mortgaged property as actually operated since the date of filing of the reorganization petition. The court cannot see why past earnings of a bridge line should be measured by a different yardstick than the future earnings.—Id.

When bonds of the debtor were pledged to secure its notes with the Reconstruction Finance Corporation, the pledgee is entitled as a matter of law to receive outright the new securities issuable in respect of its collateral, unless it receives for its debt cash or new securities substantially equivalent to cash, or unless it consents to accept a different treatment.—Id.

The effect of a pledge of bonds to secure a note of the same obligor is to give the pledgee the power to issue the pledged bonds, thereby increasing the pledgor's debts, by foreclosure of the pledge.—Id.

The effect of a pledge of bonds to secure a note of the same obligor is to give the pledgee the same proportionate interest in the security for such pledged bonds, up to the total debt for which such bonds are pledged, as he would have if he owned and pledged the bonds.—Id.

A principal purpose of the voting trust is to prevent the divorcement of management from actual ownership during the period immediately after re-

organization, when stocks, which in absence of a voting trust would designate and control the management, can be expected to have only a speculative value. A voting trust, whose trustees are appointed by those having the interest of the enterprise at heart, can prevent speculators, who might acquire a majority of the stock for a relatively small sum of money, from managing the enterprise for their own selfish ends.—Id.

Those who hold the securities of a corporation about to be reorganized stand in the same relation to the corporation resulting from the reorganization as does one about to make a loan to a corporation. They may lawfully require the creation of a finance committee and a voting trust as further security for their continued investment in the enterprise.—Id.

When the matter had been pending in the court and before the Commission for 5 years, a plan had been certified to the court before motion for evaluation was made, time for making such a determination is long since past, especially when the debtor's counsel does not know what use would be made of it.—Id.

Differences in amounts of indebtedness and in amounts and character of collateral warrant differences in treatment of the Railroad Credit Corporation, the collaterally secured banks, and the Reconstruction Finance Corporation.—Id.

After a fair and equitable plan has been formulated and worked over for years, the court will not substitute for it an alternative plan presented by the debtor, even if it be assumed the alternatives are fair and equitable.—Id.

Appointment of reorganization managers by agencies other than the court, not approved. As the court did not appoint and cannot remove the managers, it is powerless to compel prompt reorganization. But the plan will not be sent back to the Commission, since the delays will probably not be greater than delay which would result from sending it back to the Commission.—Id.

Recommendation that the reorganized corporation assume payment of pensions theretofore granted to employees of the debtor, adopted.—Id.

The plan is not unfair and inequitable by requiring new stock to be deposited under a voting trust representing 31.4 percent of first and refunding bonds on the ground that holders of the balance are not represented on the voting trust, as the interests of holders of this 31.4 percent are no different from the interests of the holders of the balance.—Id.

The statute contains no mandatory direction to determine the value of any or all of the debtor's property. It merely directs the manner of determination if it shall be necessary to determine the value of any property.

The plan will not be disapproved because of failure of the Commission to consider the supposed advantages of consolidation of the debtor with the Chicago, M., St. P. & P. R. Co., 3 years elapsing before any attempt was made to show the advantages of consolidation, 3½ years elapsing before a joint plan of reorganization was attempted to be filed.—Id.

Plan should not be disapproved because the Commission allowed participation to creditors in respect of unpaid interest subsequent to the filing of the petition for reorganization. Objection that the effective date of the plan should be advanced so as to cut off accrual of interest to claimants, overruled.—Id.

The court has no power to make allowances for compensation for services compensable under the statute in excess of the maximum allowances fixed by the Commission, whether such excess be payable out of the mortgaged property only or from other sources.—Id.

When portion of the line covered by a mortgage was authorized to be abandoned and sold free of the mortgage, the proceeds were subject to the reorganization; not required to be paid to the trustee under the mortgage and distributed to its bondholders.—Id.

Bondholders objecting to the plan are not entitled to subrogation of bonds of after-acquired railroad, executed prior to date of the debtor's bonds carrying provision no new mortgage would be created so long as the debtor's bonds were outstanding, upon any railroad owned by it, except with inclusion of provision that the bonds should be secured by the new mortgage, as mortgage securing the bonds was not a new mortgage and was not created by the "company" nor by a line at that time owned by it.—Id.

In re New York, S. & W. R. Co., 36 Fed. Supp. 158, district of New Jersey.—District courts have jurisdiction to review tax assessments against railroads in reorganization proceedings.

Trustee instructed to refrain from participation in State tax litigation, as futile.—Id.

Capitalized earning power should be the sole direct consideration for valuation of railroad under reorganization; other factors are relevant only in the

light of their effect on the company's earnings. Valuation for State tax determined by capitalizing at 5 percent of return, average net railway income from property within the State after deducting cost of procuring business originating on other lines.—Id.

In re Denver & R. G. W. R. Co., 38 Fed. Supp. 106, district of Colorado.—This section expresses the public policy which led to its enactment, and demands that the operation of railroads be continued for the benefit of the public, regardless of the interests of their creditors and stockholders.

Plan for reorganization committee should require that members representing the various interests shall be residents of the States in which the property is located, and counsel for the committee, if any are necessary, should be appointed by the court.—Id.

While a scaling-down of all claims must be expected in any reorganization, the Commission's plan is a little too drastic in asking the Consolidated bondholders to subordinate their prior lien on that part of the line which carries the heaviest traffic, in favor of the issue of the new first-mortgage bonds in which they have no participation.—Id.

The Discussion Plan rejected, primarily because it fails to provide the necessary new cash required, and because it provides for a relative distribution of the senior securities inconsistent with the distribution provided for it in the Commission's plan, and because it has no chance of success.—Id.

That the vast majority of the security holders have approved the plan is not the test of whether the plan is a fair and equitable one.—Id.

In considering the plan submitted, the function and duty of the court are no less than they are in equity receivership reorganization, which calls for an informed, independent judgment, and private rights as respects property in the hands of the court are subject to the superior dominion of the court, and are to be adjudicated pursuant to the standards prescribed by the Congress.—Id.

Any plan approved should aim to cure the financial and business ailments of the debtor, and should not merely provide immediate relief, but be drastic enough to assure continued solvency of the enterprise, even under unfavorable conditions.—Id.

The amount of fixed charges of any approved plan should not exceed the interest on the first-mortgage bonds in the amount called for by the Commission plan.—Id.

Eastman formula applied, i. e., fixed charges under a reorganization plan should not exceed 80 percent of the net available for interest in the 3 worst years of the last 10.—Id.

Stockholders and other junior interests may be excluded from any plan of reorganization if the court finds that the debtor is insolvent.—Id.

Capital funds and annual depreciation charge on equipment should be set aside and earmarked as a special cash fund and used only to pay costs of additions and betterments, take care of interest and principal payments on equipment-trust obligations outstanding or hereafter issued, purchase, building, improvement, of equipment; to eliminate temptation of future managements to bleed the adequate upkeep of the property in order to pay interest or dividends.—Id.

Proposed sale of new issue of common stock to the debtor's connecting carriers, not approved. The stock should be distributed 40 percent to the Missouri Pacific, 40 percent to the Burlington, 20 percent to the Rock Island, to insure that no one of the three should have control of this voting stock.—Id.

Too large a proportion of railway financing should not be in the form of fixed-interest bonds, and investors in the securities of the Nation's transportation systems should be considered more as stockholders entitled to dividends out of earnings, rather than creditors legally entitled to demand payment of interest and principal on fixed dates, regardless of whether earned or not.—Id.

Favorable treatment accorded the old advances of the Finance Corporation approved. Its collateral, securities of the Denver gateway, is essential competitively to the future operation, perhaps even the existence of the reorganized company, and success of the plan depends upon its furnishing the new money necessary to put any plan into effect.—Id.

In view of the new factor, willingness of connecting carriers to pay $10,000,000 for voting control of the reorganized company, lightening the burden of the Finance Corporation, it is hoped that the latter will be content with somewhat less favorable treatment.—Id.

Chase National Bank v. *Mobile & O. R. Co.*, 37 Fed. Supp. 453, southern district of Alabama, southern division.—The hours of work of the attorneys can be looked at as showing the service was long drawn out, but is a poor yardstick. The

court considered the time consumed, skill shown, sums involved, risk involved, experience and standing of the attorneys, results accomplished, and time away from the attorney's offices by reason of hearings being held in Mobile.

In re Denver & R. G. W. R. Co., 38 Fed. Supp.. 120, district of Colorado.—Plan submitted by interested parties which is not within the framework of the Commission's plan, fails to provide the new cash necessary to carry it out, fails to give equitable treatment to the divisional mortgages as determined by the Commission, greatly favoring certain issues at the expense of others, is presented without any assurance of acceptance by the parties, must be rejected.

Representation of the insurance group, in view of the small amount of bonds of any one issue, should be cut to one member, and the court or some other proper authority should name a member to represent the public interests of the citizens of Colorado.—Id.

The plan, approved, meets the principal objections of the creditors, recognizes the first-lien position of the insurance group, gives the Finance Corporation a means of liquidating the new money required from it, is well within the limits of the Commission's plan, and the court's informed, independent judgment.—Id.

The property should be under the direct control of the court until the reorganization plan is completed.—Id.

CAR-OVER-CAB

Philadelphia-Detroit Lines, Inc. v. *Simpson*, 37 Fed. Supp. 314, southern district of West Virginia.—West Virginia statute prohibiting operation over its highways of motor vehicles having two levels, for carriage of other vehicles, vehicles carrying other vehicles any of which or a part of which is carried at a height of 115 inches above the ground, or carrying other vehicle any part of which is above the cab of the carrier vehicle or over the head of the operator of such carrier vehicle, or axle of which is 3 feet higher than other axle, is not unconstitutional as denying equal protection of law or unduly burdening interstate commerce.

CASUAL, OCCASIONAL, RECIPROCAL TRANSPORTATION

California v. *Thompson*, 313 U. S. 109.—State statute requiring every person who sells or offers to sell or arrange for transportation on the State's highways, to obtain a license, the object being to safeguard the public traveling by motor vehicle from fraud and overreaching, does not violate the commerce clause, as applied to a person who, without compliance, arranged for transportation from California to Texas, of passengers, on a single trip of the carrier.

N. E. Rosenblum Truck Lines, Inc. v. *United States*, 36 Fed. Supp. 467, eastern district of Missouri, eastern division.—One who occasionally furnishes equipment for interstate transportation does not come within the act.

CLASSIFICATION

Crancer v. *Lowden*, 121 Fed. (2d) 645, Eighth Circuit.—The major portion of each carload being used pipe-thread protecting rings, shipped loose and commingled in the cars, tariff providing that when articles were shipped in a mixed carload the classification applicable to the highest classed or rated article in the car should apply, classification as pipe fittings consisting of used iron pipe-thread protecting rings, with 10 percent penalty for shipment loose, uncrated, and not in packages. was justified.

Carolina Freight Carriers Corp. v. *United States*, 38 Fed. Supp. 549, western district of North Carolina.—Under the Commission's classification (2 M. C. C. 703) a carrier willing to haul any freight offered outside of that requiring specialized equipment, should be classified as a carrier of general freight. Being a common carrier of general freight during the "grandfather" period, applicant became entitled to a certificate on the same basis, and the Commission is not justified in limiting the certificate to specific commodities and to points served with such commodities.

The limitations are unreasonable, amount to a *reductio ad absurdum* of the position taken by the Commission in the instant case, and a number of other cases, to the effect that classification justifies limitation of "grandfather" certificates to specific commodities shown to have been transported between specific points.—Id.

COAL MINES CONTROLLED BY RAILROADS

Powell v. *Gray*, 114 Fed. (2d) 752, Fourth Circuit.—Coal from captive mines unquestionably affects the market; but it is not sold or purchased on the market, therefore does not directly compete with coal so sold or purchased; is excluded from regulation under the Bituminous Coal Act.

The court does not doubt the power of Congress to regulate interstate commerce in coal produced in captive mines, but it has not attempted to do so, the act providing that code and price-fixing provisions of the act shall not apply to coal consumed by the producer or transported by the producer to himself for consumption by him. Railroad company leasing coal mines on royalty basis is a producer.—Id.

Keystone Mining Co. v. *Gray*, 120 Fed. (2d) 1, Third Circuit.—The agency rule should not be applied, and corporate entity should not be disregarded in order to avoid the effect of a regulatory statute enacted in the public interest. Coal company wholly owned and controlled by railroad company, selling all coal produced to the railroad, will not be considered as a separate corporate entity engaged in producing but not consuming coal. Therefore it is not entitled to exemption on the ground that coal produced is being consumed by the producer.

COMMODITIES CARRIED

Carolina Freight Carriers Corp. v. *United States*, 38 Fed. Supp. 549, western district of North Carolina.—Finding of the Commission that the transportation service of plaintiff as a common carrier of commodities in the territory served prior to and since June 1, 1935, was limited to commodities carried and points served prior to and since that date, ignores the common-law duty of a common carrier and the essential character of his holding out; is so arbitrary and unreasonable as to transcend the Commission's power.

Howard Hall Co., Inc. v. *United States*, 38 Fed. Supp. 556, northern district of Alabama, southern district.—Limiting the applicant's operations to the specified commodities to and from the territory and points named, according to its bona fide operation on the statutory date and continuously since, was just and equitable and within the Commission's province.

COMMON CARRIERS

Carolina Freight Carriers Corp. v. *United States*, 38 Fed. Supp. 549, western district of North Carolina.—The bona fide operation provided for in the statute means that plaintiff must have done a substantial volume of business within the territory. But nothing in the act justifies the Commission in saying that because a common carrier operating as a general carrier of package freight did not haul rubber tires prior to 1935 he is not to be permitted to haul them in 1940.

The effect of the language used in sec. 203 (a) (14) is merely to make clear that "specialty haulers," i. e., those who transport any special class or classes of property, are to be deemed common carriers, as well as those who transport property generally.—Id.

Contention that the Commission's limiting the certificate would serve to put plaintiff out of business is manifestly justified, since it is hardly conceivable that a trucking company could do business if allowed to carry loads in only one direction, and the limitations imposed by the order will render it practically impossible for the trucks of plaintiff to obtain freight when returning south.—Id.

Lubetich v. *United States*, 39 Fed. Supp. 780, western district of Washington, northern division.—Finding that plaintiff was not entitled to certificate as a common carrier, as on and since the statutory date the traffic handled by him was solicited and billed by other motor carriers, will not be disturbed, the act requiring that plaintiff should be a common carrier on and after such date.

N. E. Rosenblum Truck Lines, Inc. v. *United States*, 36 Fed. Supp. 467, eastern district of Missouri.—Complainants prior to July 1, 1935, providing equipment and drivers, license fees, assuming responsibility for loss and damage, controlling the operation actually conducted by common carriers, under agreement, were contract carriers, though shipments were forwarded in the names of the common carriers who paid complainants for each trip on a weight basis, et cetera.

O'Malley v. *United States*, 38 Fed. Supp. 1, district of Minnesota, third division.—Finding that applicant was not a carrier will not be set aside, the

facts not showing that he issued bills of lading, procured, loaded, unloaded freight, nor that he directed and controlled the operations to such extent as to make him responsible to the shippers and to the public.

Mengel v. *Inland Waterways Corp.*, 34 Fed. Supp. 685, eastern district of Louisiana, New Orleans division.—A towboat is not a bailee nor an insurer of the safety of the tow nor has it imposed upon it the obligations of a common carrier.

COMPETITION

Inland Motor Freight v. *United States*, 36 Fed. Supp. 885, district of Idaho, northern division.—That there are three truck lines and a railway operating between points involved, that operation of another will to a certain extent decrease tonnage and revenues available for other carriers, does not defeat the Commission's finding of public convenience and necessity as a basis for its grant of certificate.

The mere fact that the revenue of some operators will be reduced by the competition would not grant to the Commission or the court the power to deny competition.—Id.

CONSOLIDATION AND CONTROL

Detroit Edison Co. v. *Securities & Exc. Comm.*, 119 Fed. (2d) 730, Sixth Circuit.—Seven major types of corporate control were extant when the public Utility Holding Act was passed. "Public interest" means that the public has some pecuniary interest or an interest by which legal rights or liabilities of its individual members are affected by the operation of the utility. The statute contemplates action prospectively, is a preventative measure intended to regulate action before interests of those concerned are adversely affected.

Railway Labor Executives' Assn. v. *United States*, 38 Fed. Supp. 818, District of Columbia.—Section 5 (4) was rewritten in 1940, and there is no longer any requirement that particular transactions shall be in harmony with any general plan.

The interpretation of the meaning of each phrase must be closely related to the time and circumstances of its use.—Id.

The rule that reenactment of a statute after it has been construed by officers charged with its enforcement impliedly adopts the construction, applies only when the construction is not plainly erroneous.

Under decision of the Supreme Court in the *Lowden case*, the language of section 1 (18)-(20) is no longer doubtful, and thus considered with section 5 harmonizes with the whole act, to the end intended by Congress. The Commission's denial of consideration of the employees' petition set aside. The phrase "public convenience and necessity" in section 1 (18)-(20) was intended to have substantially the same meaning as "public interest" in the consolidation section. The Commission's authority to attach terms and conditions to certificate as public convenience and necessity may require likewise embraces the displacement of employees, with its consequences on efficiency of the transportation system.—Id.

CONTINUOUS OPERATION

Howard Hall Co., Inc. v. *United States*, 38 Fed. Supp. 556, northern district of Alabama, southern division.—The words of the statute "since that time" may not be limited and construed to mean "since that time and until the filing of the application." There is no merit in the contention that the Commission had no right to consider evidence of continuous operations beyond the date of the filing of the "grandfather" application.

Since the Commission received evidence of operations for the interim period, the court will not presume that it failed to give due consideration to such evidence in passing upon the application.—Id.

Evidence of shipments within the 100-mile area claimed not showing substantial, bona fide, operations of sufficient regularity to require issuance of a certificate authorizing free-lance operation in so large a territory, the Commission acted within its authority and not capriciously or arbitrarily in limiting the operations to a 10-mile zone beyond the city's limit.—Id.

COURT COSTS; ATTORNEY'S FEES

City of Danville v. *Chesapeake & O. Ry. Co.*, 34 Fed. Supp. 620, western district of Virginia.—Allowance of attorneys' fees should be confined to service con-

nected with the suit before the court and is not intended to cover services rendered in the proceeding before the commission out of which the reparations were awarded. Allowances requested reduced.

American Furniture Co. v. *Norfolk & W. Ry. Co.*, 34 Fed. Supp. 646, western distict of Virginia.—Allowance of $12,000 for attorneys' fees reduced to $7,000.

W. I. Anderson & Co., Inc. v. *Alabama G. S. R. Co.*, 38 Fed. Supp. 453, northern district of Georgia.—Judgment providing that all costs in the cases are adjudged against the defendants means all costs legally taxable against them.

Law with respect to additional clerk's fee of $5, title 28, section 551, is inapplicable to cases controlled by section 16 (2) which provides that plaintiff shall not be liable for costs unless they accrue upon his appeal.—Id.

DEMURRAGE

Indiana Harbor Belt R. Co. v. *Jacob Stern & Sons*, 37 Fed. Supp. 690, northern district of Illinois, eastern division.—A car owner may hold a car on his own track without becoming liable for demurrage. The cars were the shipper's, the track was the shipper's, and when the car was spotted on that track, consideration furnished by the carrier was ended.

EFFECTIVE DATE

Lubetich v. *United States*, 39 Fed. Supp. 780, *Los Angeles-Seattle Motor Exp., Inc.*, v. *United States*, 39 Fed. Supp. 783, western district of Washington, northern division.—The Commission having denied plaintiff's "grandfather" application, it had power to say when the order should be effective. Plaintiff could not make a part of its "grandfather" proceeding its subsequent application for a certificate of convenience and necessity so as to defer the effective date of such order of denial until the latter application was passed upon.

Gregg Cartage & Storage Co. v. *United States*, — Fed. Supp. —, northern district of Ohio.—While if the application had been acted upon between Feb. 12, 1936, the date of its filing, and Oct. 5, 1937, the date of bankruptcy and interruption of service, it no doubt would have been allowed, the evidence does not disclose that failure of the Commission to act upon the application within that time was arbitrary or intentional. The number of "grandfather" applications was so great all could not have been considered within such period.

ELKINS ACT

United States v. *Union Pac. R. Co.*, 34 Fed. Supp. 4, western district of Missouri, western division.—In determining whether present rental rates constitute concessions and rebates, the fair value of the property will be considered without regard to the source of the capital with which it was acquired.

The legality of future conditions will be determined in the light of facts and circumstances then existing. It will not be presumed that future violations will occur.—Id.

In determining what rate of return will constitute an intentional and unlawful rebate or concession with respect to interstate transportation, economic conditions generally in the community will be considered. The return realized on a particular enterprise will be considered only to the extent of its comparative similarity to the enterprise in question.—Id.

Only such rentals as will result in returns so meager that the owner would be unwilling to operate the property therefor, absent an improper motive, will result in unlawful concessions.—Id.

The conclusion of lawfulness or unlawfulness will be reached only after considering the nature of the enterprise, the profits generally realized from like enterprises, the resulting incidental and collateral benefits, the use to which the improvement is to be devoted, and other related considerations.—Id.

The court has no power to fix permanent minimum rental rates even until further order; it may only enjoin rebates and concessions conferred by inadequate rates.—Id.

United States v. *Phillips Petroleum Co.*, 36 Fed. Supp. 480, district of Delaware.—Section 2 deals with procedure for enforcing provisions of statutes relating to interstate commerce, provides for bringing into court additional interested parties other than carriers. Congress had in mind the enforcement of the Interstate Commerce Act as distinguished from punishment for its violation. The section looks to proceedings of the nature of equitable proceedings.

The Elkins Act must be considered as a whole. When enacted in 1903 it

did not include section 41 (3), (section 1 as enacted) the forfeiture section, which was added in 1906.—Id.

Section 1, dealing only with crimes, providing that anything done or omitted to be done by a corporate common carrier in violation of acts regulating commerce is a misdemeanor, fixing a penalty, sets out that violations shall be prosecuted in any Federal court having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation is conducted.—Id.

Section 43, (section 3 as enacted) must be construed in the light of the general venue section of the Judicial Code, title 28, section 112 (section 51 as enacted), which prohibits bringing civil action against any person in any other district than that whereof he is an inhabitant, which limits the broad language of the Elkins Act in this connection.—Id.

Corporation organized under the laws of Delaware, domiciled and resident therein, is subject to the jurisdiction of the District Court for the District of Delaware.—Id.

By section 43 Congress gave a choice of venue to the Attorney General. Choice of venue arises where the acts complained of are alleged to have been committed in part in more than one judicial district. That the Attorney General has such a choice does not prevent him from instituting suit in the district in which the corporate carrier is an inhabitant.—Id.

Venue provisions of section 41 (3) are separate and distinct from those of sections 41 and 43, which in turn are separate and distinct from each other.

Action to enjoin paying and acceptance of rebates in the form of dividends between the pipe-line company and the petroleum company, and seeking forfeiture of three times the amount received or accepted, was properly joined.—Id.

EMPLOYEES AFFECTED BY ABANDONMENT

Railway Labor Executives' Assn. v. *United States*, 38 Fed. Supp. 818, District of Columbia.—That the Commission for 5 years prior to enactment of the 1940 act had taken the position that it had no authority under section 1 (18)–(20) to impose conditions for the benefit of labor when abandonment was involved, and had directed attention of Congress thereto, and Congress had not rewritten the section to specifically authorize imposing such conditions, did not mean that Congress impliedly adopted the Commission's construction. The Commission is authorized to provide protection for displaced employees, similar construction under abandonment provisions being required, just as under the consolidation provisions of the act.

FAIR RETURN

United States v. *Union Pac. R. Co.*, 34 Fed. Supp. 4, western district of Missouri, western division.—"Fair return" as that term is used in utility regulation is not the criterion for determining the existence or absence of an unlawful intention to make a personal gift to tenants who are necessary to the success of the enterprise, the general good to be derived from it justifying exaction of less than the "full, fair return" in money which enterprises financed by private capital are entitled to demand.

Evidence of the return received from elevator properties located in the same community is of little, if any, value in testing the proper return which should be derived from the Food Terminal. The utilities are so radically different in so many respects that the comparison of revenues can serve no helpful purpose.—Id.

Ordinarily, return from investment in Government securities may safely be accepted as the lowest return which an investor would voluntarily accept. Since the Food Terminal is endowed with the characteristic of performing a general public good and is owned by one properly chargeable with promoting that public good as well as conserving the investment, return on Government securities is not controlling.—Id.

FOREIGN VESSEL CARRYING PASSENGERS BETWEEN PORTS

The Granada, 35 Fed. Supp. 892, eastern district of Pennsylvania.—Statute forbidding foreign vessels to transport passengers between ports of the United States, directly or by way of a foreign port, was intended to protect our coastwise and domestic shipping. (Title 46, section 289). Honduran vessel, chief business that of transporting bananas, taking on 11 cruise passengers as an

incident thereto, New York City to Mexico, and return, putting in at Philadelphia on return, to unload bananas for safety of the cargo, tendering fare to the passengers for balance of the trip, was not subject to the penalty imposed; the transportation of passengers was not detrimental to the coastwise monopoly sought to be assured United States vessels.

FULL-CREW REQUIREMENT

Railroad Commission of Texas v. *Pullman Co.*, 312 U. S. 469.—In action to enjoin State law requiring that Pullman cars be continuously in charge of an employee having the rank and position of a Pullman conductor, assailed as violating the Federal Constitution, and by Pullman porters, intervening, as discriminating against Negroes, Federal courts, exercising a wise discretion, will restrain their authority pending proceedings by the State court, to secure a definitive construction of the statute, to avoid needless friction with State policies that may result from tentative construction and premature adjudication of its constitutionality.

Beal v. *Missouri Pac. R. Co.*, 312 U. S. 45.—Suit to restrain prosecutions under State full-train crew law should not be entertained by a Federal equity court when only a single test prosecution is contemplated.

GRADE CROSSINGS

Duluth, W. & P. Ry. Co. v. *Zuck*, 119 Fed. (2d) 74, Eighth Circuit.—Requirements of the Minnesota Railroad and Warehouse Commission as to crossing signs do not relieve the railroad of additional precautions.

HOURS OF DRIVERS OF MOTOR VEHICLES

National Labor Relations Board v. *Carroll*, 120 Fed. (2d) 457, First Circuit.—Contract carrier engaged in interstate transportation of mail by truck, under contract with the Post Office Department, providing general limitations and the right to suspend any driver for inefficiency or other serious delinquency, but not restricting the right of the carrier to employ whomsoever he chooses, is an independent contractor. Drivers hired by him are his employees, and not employees of the United States.

Magann v. *Long's Baggage Transfer Co.*, 39 Fed. Supp. 742, western district of Virginia, Lynchburg.—The Commission has jurisdiction of hours of service of contract carrier's employees, transporting mail under contract with the Post Office Department. Safety of operation and interstate commerce are involved. The contract carrier is exempt from operation of the Fair Labor Standards Act relating to maximum hours of service.

Thompson v. *Daugherty*, 40 Fed. Supp. 279, district of Maryland.—A carrier operating motortrucks engaged exclusively in carriage of interstate mail, under contract with the United States, is a contract carrier. As such carrier is an independent contractor in relation to the United States, neither he nor his employees are employees of the United States within the meaning of the Fair Labor Standards Act.

Congress did not intend to include within the Motor Carrier Act contract carriers engaged exclusively in transporting mail, for regulation by the Commission of maximum hours of service. Defendant is subject to the provisions of the Fair Labor Standards Act.—Id.

West v. *Smoky Mountains Stages*, 40 Fed. Supp. 296, northern district of Georgia, Atlanta Division.—Exemption of employees from application of the Fair Labor Standards Act is not made to depend upon the exercise of power over them by the Commission, but merely upon the existence of power to establish qualifications and maximum hours of service pursuant to section 204 of the Motor Carrier Act. The former is not applicable to mechanics, employed in activities affecting the safety of operation of busses. Such an employee is included within the terms of the Motor Carrier Act.

Gerdert v. *Certified Poultry & Egg Co.*, 38 Fed. Supp. 964, southern district of Florida, Miami division.—The exemption in the Fair Labor Standards Act covering employees of motor carriers subject to the Commission's jurisdiction is not conditioned upon the exercise of the power by the Commission, but merely exempts those whose hours the Commission has the power to regulate. Truck drivers of a private carrier operating in interstate commerce are subject, as to hours of service to regulation by the Commission.

Drake v. *Hirsch*, 40 Fed. Supp. 290, northern district of Georgia, Atlanta division.—Truck driver engaged to a substantial extent in interstate commerce because of his activities in delivering drop shipments which were moving in interstate commerce, and which amounted to a constant practice, came within the provisions of the Fair Labor Standards Act.

Missel v. *Overnight Motor Transp. Co.*, 36 Fed. Supp. 980, district of Maryland.—The exemption clause of section 13 (b) of the Fair Labor Standards Act embraces only those employees with respect to whom the Commission "has power" to establish requirements as to qualifications and maximum hours of service, and the Supreme Court has limited such "power" to those employees "whose activities affect the safety of operation."

Action by employee of a motor common carrier of freight in interstate commerce subject to the Motor Carrier Act, to recover liability imposed by the Fair Labor Standards Act upon employer violating the wage and hour provisions, is within the jurisdiction of the Federal district court regardless of the amount in controversy or citizenship of the parties.—Id.

Fleming v. *Hitchcock*, 38 Fed. Supp. 358, southern district of Florida, Tampa division.—Manufacture, sale, distribution, of car strips, bulkhead materials, car-door boards, for use in interstate transportation, rail and truck, is subject to the Fair Labor Standards Act.

INSURANCE

Maryland Casualty Co. v. *Southern Pac. Co.*, 119 Fed. (2d) 672, Ninth Circuit.—As the bond contract was executed in California, to be performed in California, it is to be interpreted by the law of that State. The surety is not entitled to anything but equitable subrogation, as contrasted with *pro tanto* subrogation.

The surety company has no right to subrogation until such time as the railway companies have been made whole on the indebtedness for transportation charges of the truck companies, adjudicated bankrupt.—Id.

The condition of the tender that the railway companies execute and deliver to the surety company an assignment of a pro rata share of the claims against the bankrupt truck companies was one that the surety company had no right to impose.—Id.

Stipulation providing "notwithstanding anything herein to the contrary, the said sum of money shall be retained by the Clerk of the Court until final judgment be rendered herein and be then distributed by the Court to the parties entitled thereto in accordance with the terms of said final judgment" was a restriction on the rights of the railway companies, prohibiting them from withdrawing the money during pendency of the action. Interest should be allowed during the period, in addition to interest which was allowed from date of notice of default to and including date of deposit of the award in court.—Id.

S. Nathan & Co., Inc. v. *Red Cab, Inc.*, 118 Fed. (2d) 864, Seventh Circuit.—Generally a common carrier of goods, wares, merchandise, is not a common carrier of money and jewels, unless he has held himself out as ready and willing to transport these articles for the public generally for hire; they are not regarded as subjects of ordinary commerce. And merchandise carried in a trunk without knowledge of the carrier is not protected baggage; if lost without express fault of the carrier, it is not liable as an insurer.

Venuto v. *Robinson*, 118 Fed. (2d) 679, Third Circuit.—The agreement of employment between the carrier and operator of the truck was made in North Carolina. The operator being in New Jersey in pursuance of the business which was the subject matter of the contract, the law of New Jersey is the one to be referred to in determining the rules of liability arising from the relationship of the parties.

Owner of truck who hauled exclusively for the North Carolina carrier at the time the accident took place in New Jersey was an independent contractor under New Jersey law. Whether the relationship between the carrier and the operator was that of master and servant or employer and independent contractor is to be determined by the law of the State in which the liability arose.

An individual or corporation carrying on an activity which can be lawfully carried on only under a franchise granted by public authority and which involves an unreasonable risk of harm to others, is subject to liability for bodily harm caused to such others by the negligence of a contractor employed to do work in carrying on the activity.—Id.

Carriage of freight in high-powered motor vehicles on public highways is business attended with very considerable risk. The motor carrier is subject to

liability caused by negligence of an independent contractor employed to do work in carrying on the activity the carrier is granted authority to conduct.—Id.

Automobile Ins. Co. of Hartford, Conn. v. *Fixler Bros., Inc.*, 117 Fed. (2d) 979, Sixth Circuit.—Breach by insured carrier of warranty that cargo would not be left unattended while in transit except or unless in a suitable and properly attended garage or building bars recovery by owner of amount of judgment obtained by it against the carrier.

Grier v. *Tri-State Transit Co.*, 36 Fed. Supp. 26, western district of Louisiana, Shreveport district.—The insurer, obligated to pay any final judgment, cannot be joined with the motor carrier as defendant under the Louisiana direct action statute. The Louisiana act cannot either affect or control the Motor Carrier Act, 1935, giving exclusive jurisdiction to the Commission.

Motion to dismiss civil action against the insurer granted, but without prejudice to its institution later, should final judgment be against the interstate motor carrier insured. Defendant's appearance did not constitute waiver of motion to dismiss and for more particulars, in view of Rule 12 (g) of title 28, section 723c.—Id.

Axton-Fisher Tobacco Co., Inc., v. *Ziffrin Truck Lines, Inc.*, 36 Fed. Supp. 777, western district of Kentucky.—If the insurance was issued in addition to the carrier's common-law liability, plaintiff is entitled to a judgment as a matter of law, as the receipt of the shipment and the failure to deliver are admitted by the carrier.

If the insurance was issued and accepted in lieu of the carrier's common-law liability, such agreement is illegal, and leaves the plaintiff in position to recover from the carrier on its common-law liability for failure to deliver the goods to the consignee.—Id.

Federal rule providing for third-party practice was not intended to contradict or to nullify the provisions of the rule providing for summary judgment. Action is still standing for trial of third-party defendant. Plaintiff's motion for summary judgment sustained, and case retained for further proceedings upon the defendant's third-party complaint against the insurance company.—Id.

INTEREST

City of Danville v. *Chesapeake & O. Ry. Co.*, 34 Fed. Supp. 620, western district of Virginia.—For some years money has been available at less than 6 percent; investments promising reasonable safety cannot be found at such a rate. Four percent on reparation award is proper. Interest at 4 percent per annum from date of the order until date of judgment, approved.

Whether interest shall be allowed on amount of the reparation award or any part of it, under Federal and Virginia law, is within the discretion of the court. The district court sitting in Virginia is required to conform with Virginia law.—Id.

INTERLOCKING DIRECTORATES

Overfield v. *Pennroad Corp.*, 39 Fed. Supp. 482, eastern district of Pennsylvania.—Action for accounting, bill alleging that Pennroad Corp. was fraudulently dominated and controlled through voting trustees who were officers and directors of the Pennsylvania Railroad, causing Pennroad to invest $2,300,000 in a freight-forwarding company for the benefit of the railroad, to detriment of Pennroad, was not barred for laches by stockholder's failure to assert her rights for 10 or 12 years when prior actions had been brought by others on the same grounds, furnishing notice to the defendants.

INTERRUPTION OF SERVICE

Gregg Cartage & Storage Co. v. *United States*, — Fed. Supp. —, northern district of Ohio.—Ruling by which the Commission declined to look beyond the bankruptcy of the carrier, holding bankruptcy to be a matter within the control of the applicant, without considering the causes of bankruptcy, is adoption of a proper administrative policy or the application of a rule of law; supported by 240 U. S. 581.

Alton R. Co. v. *United States*, 36 Fed. Supp. 898, eastern district of Michigan, southern division.—The record disclosing that the applicant's last shipment to Arkansas was on May 12, 1935, and his testimony supporting a conclusion that in that State his operations had been abandoned, the Commission's authorization to him to operate in that State will be set aside.

INTERSTATE COMMERCE

Oregon-W. R. & Nav. Co. v. *Pacific Continental Grain Co.*, 38 Fed. Supp. 230, district of Oregon.—That the bills of lading read to an intrastate point is not controlling if there actually was an intent to commit particular grain, either directly or after conditioning, to an interstate or foreign journey.

Inasmuch as the grain eventually went into interstate or foreign commerce, and defendant is an export dealer in grain, the intention to ship each car in interstate or foreign commerce in continuous journey, existed at the point of origin.—Id.

General Shale Products Corp. v. *Struck Construction Co.*, 37 Fed. Supp. 598, western district of Kentucky.—The present construction of the commerce clause is to be used. Where commodities are bought in one State for use in another State, the sale is just as much a part of interstate commerce as is the transportation after the sale.

INTERVENTION

Brotherhood of Locomotive Engineers v. *Chicago, M., St. P. & P. R. Co.*, 34 Fed. Supp. 594, eastern district of Wisconsin.—Rule 24 (b) of the Federal Rules of Civil Procedure dispenses with any requirement that the intervenor shall have a direct or pecuniary interest in the subject of the litigation.

INTOXICATING LIQUORS

Arnold v. *United States*, 115 Fed. (2d) 523, Eighth Circuit.—Under statute prohibiting interstate shipment of intoxicating liquor unless the packages are labeled as required, "ship" means to commit to any conveyance for transportation, or delivery to a carrier. The statute applies to transportation by a common, not a private, carrier.

Sharp v. *Barnhart*, 117 Fed. (2d) 604, Seventh Circuit.—As appellants had no permits as provided by the Federal Motor Carrier Act, so as to bring themselves within the protection of the act, and because that act has not yet been extended to cover ordinary traffic-safety regulations, action to recover liquor and a truck confiscated by the State while within that State is not within the exception of section 41 (8) of the Judicial Code which grants the Federal court jurisdiction of suits under interstate commerce laws irrespective of the jurisdictional amount involved.

IRREGULAR-ROUTE OPERATION

Carolina Freight Carriers Corp. v. *United States*, 38 Fed. Supp. 549, western district of North Carolina.—The limitation which the Commission's order imposes with respect to irregular-route carriers is not imposed with respect to carriers on regular routes, and is admittedly imposed for protection of regular-route carriers. Congress has made no such distinction between common carriers by regular and those by irregular routes. For the Commission to make such a distinction is to add to the act of Congress in favor of one class of carriers and against another. This the Commission cannot do.

There is nothing in the language of section 206 (a) or in the reason and spirit of the act which justifies the limiting of certificates granted common carriers under the "grandfather" clause to the precise commodities which they have theretofore hauled or in the case of carriers by irregular routes, to the precise points that they have served in the territory over which they have operated.

Alton R. Co. v. *United States*, 36 Fed. Supp. 898, eastern district of Michigan, southern division.—In many industries, distribution points are determined for areas coextensive with State boundaries. The court finds no error in the Commission's finding that carrier of motor vehicles should be authorized to serve all points in a State.

LAND GRANTS

United States v. *Northern Pac. Ry. Co.*, 311 U. S. 317. Rights of the United States and the railroad company arising out of land grants in aid of the former, determined.

MacDonald v. *United States*, 119 Fed. (2d) 821, Ninth Circuit.—So far as concerns the surface area embraced in the Federal right-of-way grants, the title

of the railroads is the equivalent of a fee, limited only by the possibility of reverter.

United States v. *Santa Fe Pac. R. Co.*, 114 Fed. (2d) 420, Ninth Circuit.—The rights of the Walapai tribe of Indians in reservation set apart for it in 1883 are subject to prior rights of the railroad to odd-numbered sections within the reservation. (Certiorari granted.)

LEASES

Joliet & C. R. Co. v. *United States*, 118 Fed. (2d) 174, Seventh Circuit.—The indenture of 1864, a lease in perpetuity, divested the plaintiff of all right, title, and interest in the property and vested a full and indefeasible title in the grantee, the Chicago & A. R. Co., its successors and assigns. The instrument, although called a lease, had none of the characteristics thereof, since there was no termination of the length of time the grantee was to hold the estate, no reservation of rent, no defeasance and no right to reenter on default by the grantee.

Texas Co. v. *Chicago & A. R. Co.*, 36 Fed. Supp. 62, northern district of Illinois, eastern division.—The receivers' use of the properties covered by the lease for a period of 9 years established adoption of the lease. Purchasing railroad had no right to elect not to adopt the lease.

Although pleadings before the Commission and its order respecting acquisition and operation of railroad properties in receivership should be considered in determining how the purchasing railroad regarded the lease involved, as to whether it had the right to elect not to adopt it, such proceedings do not alone constitute an adoption of the lease.

Joliet & C. R. Co. v. *United States*, 118 Fed. (2d) 174, Seventh Circuit.—That the parties treated the situation as one of a lessor-lessee relationship in that they entered the payments in question on the books as "income from lease of road" in one case, and "rent for lease of road" in the other, cannot be termed a voluntary admission on the part of the parties because made in accord with a classification established by the Commission.

LENGTH-OF-TRAIN STATUTES

Southern Pac. Co. v. *Conway*, 115 Fed. (2d) 746, Ninth Circuit.—No State official can be under a duty to enforce a law that violates the United States Constitution; in attempting to do so he is not fulfilling an official duty or acting for the State. If a showing of irreparable injury is made, he may be enjoined from enforcing such an act.

That it was the State attorney general's duty to enforce the Arizona train-limit law unless it be determined by appropriate court to be unconstitutional, is not a basis for treating him as one who threatens to do wrong so as to warrant action against him individually, for declaratory judgment that the law is in violation of commerce and due-process clauses.—Id.

When a threat is made or an intention expressed by a State officer to enforce a law (train-limit law) alleged to be unconstitutional, he may be sued as an individual, if there is a basis for treating him as one who threatens to do wrong, for judgment declaring the act to be unconstitutional, in a Federal court.—Id.

Missouri-K-T. R. Co. v. *Williamson*, 36 Fed. Supp. 607, western district of Oklahoma.—The practice among railroads in the past 25 years has been to improve facilities, institute long-train operation, faster and more dependable schedules. To comply with State statute limiting length of trains would require plaintiff either to make up and break up its trains at terminals outside the State or provide facilities at State lines, increasing costs.

To comply with length-of-train statute plaintiff will be required to expend additional sums. Cost of compliance is an element for appropriate consideration in determining whether the statute is arbitrary, capricious, repugnant to the due-process clause; but, standing alone, it is not always enough to warrant judicial determination of invalidity.—Id.

The exercise of the paramount power of Congress is necessary to take from the State its subordinate power to legislate as to reasonable limitation of the length of trains in the interest of public safety. Mere Congressional delegation to the Commission of power to act does not require the State to yield. It is only after action by the Commission that the State is shorn of its power.—Id.

The Safety Appliance Acts fail to make specific reference to the length of trains as an element of safety. Until an intent of Congress to exercise its

superior authority has been indicated, the State is free to legislate in the exertion of its police power.—Id.

LIEN FOR CHARGES

In re R. Hal Compton Crude Oil Purchasing Co., 39 Fed. Supp. 1, eastern district of Illinois.—A carrier has a lien for his charges upon the thing carried, and may retain possession of such thing until such charges are paid. The pipeline company is entitled to a lien for all unpaid charges for transportation of oil to the full extent of the oil retained by it. Considering the nature of transportation of oil, continuing character of the contract, and provisions of rule 6 of the tariff, the lien must be recognized by the bankruptcy court.

LIMITATION PERIOD

Casalduc v. *Diaz*, 117 Fed. (2d) 915, First Circuit.—"Filing" means delivery of the paper into the actual custody of the proper officer. "Business hours" means those hours during which persons in the community generally keep their places open for transaction of business. Half day prevailing for Saturday, appellant filing after office closed, did not curtail his statutory right by fractional part of a day.

LIVESTOCK

United States v. *Boston & M. R.*, 117 Fed. (2d) 424, First Circuit.—Opinion of carrier employees that it would be better for health of calves not to unload them in the rain does not change "wilfulness" of their noncompliance with statute forbidding confinement of animals in cars for more than 36 hours without unloading for rest, water, feeding.

Boston & M. R. v. *United States*, 117 Fed. (2d) 428, First Circuit.—If delay for repairing brake beam compelled short overconfinement of sheep, that could not excuse additional 40 minutes overconfinement chargeable to carrier's negligence in leaving conductor behind and having to return for him, "knowingly" confining sheep for more than 36 hours, which was also "willful" because it could have been avoided by due diligence.

United States v. *New York Central R. Co.*, 117 Fed. (2d) 433, First Circuit.—When cars had sufficient space for animals to rest, carrier was not compelled to unload them to avoid penalty, but it has the burden of establishing that the animals were properly fed and watered within the 36-hour period.

LOSS AND DAMAGE CLAIMS

Keystone Motor Freight Lines v. *Brannon-Signaigo Cigar Co.*, 115 Fed. (2d) 736, Fifth Circuit.—The question of business hours of the industry was germane to the issue, whether proper tender of delivery would have reduced the carrier's liability to that of a warehouseman, and evidence, proving the local custom of Saturday afternoon closing, and sign to that effect over consignor's door, was proper.

Attempted delivery to a business at a time when the business is properly and regularly closed is not tender of delivery that would terminate the interstate character of the shipment and reduce the liability of the carrier.

As attempted delivery was not such as ended the carrier's liability as a carrier, the goods were still in interstate commerce when they were deposited with appellant, who was a common carrier, for delivery under a pick-up and delivery contract. The latter service was a necessary part of the interstate transportation. The latter carrier is liable as a connecting or delivering carrier for theft of the goods from it.—Id.

Farr v. *Hain S. S. Co.*, 121 Fed. (2d) 940, Second Circuit.—In action for exoneration from limitation of liability for loss of and damage to cargo, deviation strips the ship of all excuses in her charter party and imposes upon her at least the liability of a common carrier, i. e., the liability of an insurer.

S. L. Shepard & Co. v. *Agwilines, Inc.*, 39 Fed. Supp. 528, eastern district of South Carolina.—Oral agreement for refrigeration is not admissible, because tending to alter the terms of the bill of lading. That the melons were not made as cold as the shippers would have liked raised no presumption of negligence or wrongdoing on the part of the defendant.

Meltzer v. *Baltimore & O. R. Co.*, 38 Fed. Supp. 391, eastern district of Pennsylvania.—"Salvage" value stipulated by the parties, representing the fair market value of the damaged melons, had they been sold separately, used as a

basis for determining full actual loss. "Tolerance" and cinder damage deducted, award with interest determined upon, for injury caused by carrier's negligence.

The consignee's full actual loss ordinarily is established by the difference between the fair market value of the goods undamaged and their fair market value as delivered in damaged condition.—Id.

NORRIS-LA GUARDIA ACT

Keystone Freight Lines, Inc. v. *Pratt Thomas Truck Line, Inc.*, 37 Fed. Supp. 635.—The Norris-LaGuardia Act did not intend to give labor unions the right to interfere with enforcement of Federal statutes such as the duty of connecting carrier to handle freight in established through service.

ORIGINAL PACKAGE DOCTRINE

Gerdert v. *Certified Poultry & Egg Co.*, 38 Fed. Supp. 964, southern district of Florida, Miami division.—The Supreme Court has discarded the unbroken-package doctrine.

PARTIES IN INTEREST

Inland Motor Freight v. *United States*, 36 Fed. Supp. 885, district of Idaho, northern division.—A carrier directly affected by order of the Commission authorizing its competitor to operate, whose revenues are affected, has a legal interest within the meaning of section 205 (h), providing that any party in interest is subject to relief in court from a final order of the Commission.

Alton R. Co. v. *United States*, 36 Fed. Supp. 898, eastern district of Michigan, southern division.—The railroads, equally engaged in transporting automotive vehicles, are possessed of that special and peculiar interest in enforcement of the challenged order authorizing a motor carrier of automobiles to serve the same territory, that gives them the status of plaintiffs. This being so, the court need not inquire whether they appeared as parties in the proceeding before the Commission.

PRICE STABILIZATION

Brown v. *Parker*, 39 Fed. Supp. 895, southern district of California, northern division.—California Agricultural Prorate Act results in placing a controlled embargo on the State's raisin production, for price stabilization; is a means of controlling the supply of raisins into interstate channels, is a direct and illegal interference with interstate commerce, notwithstanding that under it 30 percent free tonnage of raisins produced was available for the open market.

PRIVATE CARS

Indiana Harbor Belt R. Co. v. *Jacob Stern & Sons*, 37 Fed. Supp. 690, northern district of Illinois, eastern division.—Tariff requiring payment of demurrage was void as a matter of law, for lack of consideration, when the shipper's car was used, was spotted on the shipper's track, after line haul had been completed and the carrier had received its tariff rate therefor.

Demurrage tariff provided that when a leased car was held for unloading it should not be exempt from demurrage unless name of the lessee was on the car when it left the point of shipment, to be evidenced by notation on the bill of lading and waybill. The notation need not be on such papers before the car left the point of shipment. Addition of the notation prior to arrival would exempt the car from demurrage.—Id.

RAILROAD ADJUSTMENT ACT

Ackert v. *Baltimore & O. R. Co.*, 115 Fed. (2d) 455, Fourth Circuit.—The special court to conduct proceedings hereunder ranks with a circuit court of appeals in the weight of its conclusions.

Any person who deems himself aggrieved by a readjustment plan may apply for certiorari to the United States Supreme Court. This is equivalent to the right of review ordinarily accorded to parties aggrieved by judgments of the circuit courts of appeal, and it is broad enough to cover the case of any person aggrieved by the plan.

The act contemplates swift action on the part of the special court and that its decision shall be final, subject only to discretionary review by the United States Supreme Court.—Id.

In re Peoria & E. Ry. Co., 37 Fed. Supp. 917, southern district of New York.—Chapter 15 of the Bankruptcy Act covering railroad adjustments, insofar as allowances to others than the petitioner railway are concerned, is not in *pari materia* with title 11, sec. 205, (77) which deals with reorganization of railroads.

Decree amended to provide that upon objection by representative of holders of income bonds, on attempt of New York Central and/or the Big Four in any year or at any time, to withdraw any part of the earnings or assets of petitioner by way of recoupment or repayment of intercompany accounts, it must prove and establish its right to do so.—Id.

The court hereunder does not take possession of any property or funds; has equity jurisdiction for a limited purpose, to determine whether the adjustment sought was equitable and should be allowed.—Id.

The court has power to deal with the expenses and allowances to the petitioner and counsel for the trustee; allowances for interveners denied for want of jurisdiction.—Id.

The court has no jurisdiction properly to grant any allowance to interveners or to their counsel.—Id.

There is no reason why the Peoria & E. Ry. should be required to send out to holders of income bonds the names of any persons who may wish to be elected directors to represent the holders of income bonds. The holders of income bonds should do their own electioneering.—Id.

In re Lehigh Valley R. Co., 34 Fed. Supp. 753, eastern district of Pennsylvania.—The classes of creditors referred to in section 725 are the same as those referred to in section 710, both sections refer to the classes of creditors as they existed before any assents were obtained to the plan.

Assent to the plan by holders of terminal bonds does not make nonassenting holders a separate class.—Id.

As appeals from judgments obtained by holders of certain bonds are still pending, the court will leave open the question of classification of such bondholders.—Id.

The benefits of chapter XV are by its terms not available to a railroad corporation which is in need of financial reorganization of the character provided for under section 205 (77) of the Bankruptcy Act. It must appear hereunder that the railroad corporation's inability to meet its debts, matured or about to mature, is reasonably expected to be temporary only.—Id.

A plan which avoids reorganization and bankruptcy, thereby keeps the railroad and its subsidiaries operating normally, is in the public interest. It is in the interest of creditors and stockholders to keep the system, the only asset available for payment of their claims, in a solvent, going condition.—Id.

As the evidence indicates the gross operating income will continue to be not less than the amount realized during 1940, it may be assumed the railroad will continue to keep its expenditures for maintenance, additions, and betterments, at the present figures, and if tax settlement with the State is arrived at which will not endanger it, the plan may be approved as feasible.—Id.

Plans providing for maturity of principal of certain bonds, postponing for 5 years 75 percent of semiannual installments of interest, taking away the right of stockholders to receive dividends as long as the Finance Corporation and bank loans and deferred interest on other bond interest remain unpaid, and depriving stockholders of dividends from 75 percent of the net income until the system's indebtedness is reduced to $120,000,000, is fair and equitable, affords due recognition and fair consideration to each class of security holders adversely affected.—Id.

It would be inappropriate for the court at this time to direct specific application of an award in favor of the railroad on claim against Germany, amount to be received and time of receipt being uncertain.—Id.

Ewen v. *Peoria & E. Ry. Co.*, 34 Fed. Supp. 332, southern district of New York.—The holders of income bonds occupy much the same position as holders of preferred shares, and as such they have a very lively interest in the payment of accumulated advances. They should have representation upon the road's board of directors, so that they may continually keep advised of its affairs without the mediation of a court.

Extension of the operating agreement is not unfair to holders of first consolidated bonds on the ground that it allows the grantee to recoup accumulated advances out of income applicable to such bonds. There is no assured income applicable to the first consolidated bonds upon foreclosure which is to be used to pay junior debts.—Id.

The lien of the $500,000 prior mortgage was intended to be upon the Illinois-Indiana Division alone; Springfield Division not required to contribute ratably to its discharge.—Id.

Pledge of first consolidated bonds as security for note which was used to take up prior bonds will be considered a valid exchange, even though the form chosen, a direct pledge of the bonds, was invalid, the agreement providing for reservation of a certain quantity of first consolidated bonds, and for their issuance in exchange for prior bonds when presented.—Id.

Subrogation is a purely equitable doctrine; it disregards form.—Id.

Holders of income bonds were not prejudiced by proposal to extend agreement for 20 years, when the agreement gave the privilege of operating the railroad 50 years from April 1, 1890, with option to the grantee to extend the term, and the bonds were expressly made subject to the agreement.—Id.

Whether a mortgagor who conveys part of the property means to make the lien a primary incumbrance on what he retains, cannot be answered merely by recourse to the conveyances, or the order of their execution; it must be gathered from the implications of the particular transaction.—Id.

When all the papers involved in reorganization, the operating agreement, the mortgages, were parts of a single transaction, they are to be read together.—Id.

Extension for 20 years would be for a "reasonable period" when operating agreement gave the grantee option pending the term to extend it for a specified period, assuming that such condition was to be implied.—Id.

The transaction is not subject to be reopened after a lapse of 50 years, because half of the debtor's shares had been bought, the dealing being between old bondholders, who dealt with the purchaser at arms' length, who, as shareholders, were charged with knowledge of the whole transaction and were free to accept any conditions they chose.—Id.

Operating agreement requiring grantee to pay any balance of income after payment of operating expenses and interest, to holders of income bonds and after them to shareholders, did not create a minimum rental which the grantee was bound to pay regardless of any reduction in interest due upon the three mortgages.—Id.

As the plan does not provide for liquidation of amounts due the petitioner under the operating agreement, the order of confirmation will leave open all questions touching their amount and validity.—Id.

Uncertainty in the length of a term at the time of the execution of a contract to grant it, is no objection, if its duration will become certain before it begins.—Id.

Operating agreement covering 50 years and for further time as elected by the grantee, gave the latter option, exercisable before expiration of the term, to extend it for a definite period, despite the fact that the extension was left indefinite and to be fixed by the grantee.—Id.

As there is good prospect that the road can meet its debts if its obligations can be refinanced, adjustment rather than radical reorganization under section 77 is preferable.—Id.

The court ought to give great weight to the Commission's conclusions upon matters within its expert competence, even though in the end it is charged with final responsibility for the result.—Id.

Plan modified to provide that holders of income bonds have only one director on the debtor's board of directors. This modification does not require resubmission to the Commission, nor substantially affect the interests of any class of creditors so as to require resubmission as to them.—Id.

RAILWAY LABOR ACT

Sprague v. *Woll*, 122 Fed. (2d) 128, Seventh Circuit.—Determination of the Commission that a road is not eligible to exemption within the terms of the Railway Labor, Railroad Retirement, and Carriers' Taxing Acts, is binding if supported by substantial evidence, and not to be overruled unless arbitrary and capricious.

The holding of the court that electric road was not subject to the securities provisions of the Interstate Commerce Act was not binding on the Commission as to subsequent determination whether the railroad was exempt under the Railway Labor, Retirement, Taxing Acts, or was a part of a general steam-railroad system. The Commission is under duty to determine such question in

a proceeding *de novo*, and in accordance with evidence to be adduced in such proceeding.—Id.

Union Terminal Co. v. *Pickett*, 118 Fed. (2d) 328, Fifth Circuit.—None of the monies collected and retained by red caps were personal gifts rather than compensation for service which the terminal company hired them to perform; no contract was necessary to make them the money of the company. Red caps may not claim that letting passengers fix the amount of compensation for porter service is repugnant to the Interstate Commerce Act as discriminating in favor of the passenger who pays less and against one who pays more. Same holding, under Fair Labor Standards Act, in *Harrison* v. *Kansas City Term. Ry. Co.*, 36 Fed. Supp. 435, western district of Missouri, western division.

Williams v. *Jacksonville Term. Co.*, 35 Fed. Supp. 267, southern district of Florida, Jacksonville division.— Red caps serving passengers at terminal station, compensated by the passengers, were not wage-earning employees within the meaning of the Fair Labor Standards Act, since they work for themselves and the passengers they serve; sums paid them by the passengers must be construed as wages within the intent of the statute.

In re Virginia & T. Ry., 36 Fed. Supp. 119, district of Nevada.—The term "trucking service" was intended to apply to truckage merely incidental to carrier service.

With the exception of the matter of hours of labor, which is under control of the Interstate Commerce Commission under provisions of the Motor Carrier Act, employees of the railway and of the transit corporations are subject to provisions of the Railway Labor Act, rather than the National Labor Relations Act and the Norris-LaGuardia Act.—Id.

RECEIVER'S CERTIFICATES

United States v. *Pollard*, 115 Fed. (2d) 134, Fifth Circuit.—A receiver is an officer of the court, not the representative of the company or person whose property has been placed in his possession and under his management. Certificates issued by the railroad receiver to carry out borrowing agreement with the United States, were not certificates of a corporation within the Revenue Act; internal-revenue stamps not required.

REOPENING, REHEARING

Sprague v. *Woll*, 122 Fed. (2d) 128, Seventh Circuit.—In view of the broad scope of the language of section 16a, reenacted in section 17, authorizing rehearing by the Commission, there is no reason for distinguishing between such jurisdiction over an order under the Interstate Commerce Act and a determination under the Railway Labor, Railroad Retirement, and Carriers' Taxing Acts.

Jurisdiction of the Commission to reopen proceeding on its own motion should be sparingly exercised when reopening is contemplated after a considerable lapse of time.—Id.

If a court or administrative board has jurisdiction over a cause to be exercised in its discretion upon petition of the parties in interest, there must be such jurisdiction as empowers it to reopen the proceeding on its own motion when such action appears necessary.—Id.

American Furniture Co. v. *Norfolk & W. Ry. Co.*, 34 Fed. Supp. 646, western district of Virginia.—That four complainants did not appear or offer evidence at the original hearing, but were allowed at a further hearing to offer detailed proof, with other shippers, and were in the final report included in the reparation award, did not prejudice defendants. Contention that this action constituted denial of the claims in the first report and later accepting proof and reopening the case on the Commission's own motion, without notice, not sustained.

REPARATION

American Furniture Co. v. *Norfolk & W. Ry. Co.*, 34 Fed. Supp. 646, western district of Virginia.—That the assailed rates had been long in effect and conformed, as the carriers believed, to standards set up by the Commission, did not estop the Commission from finding them unreasonable and awarding reparation.

The Commission's order is not invalid because it awarded reparation on shipments to an intermediate point, 7 miles from the city named in the original complaint, at which only the office of the consignee was located.—Id.

Neither the report nor final order awarding reparation is required to show detailed figures as to each separate shipment involved.—Id.

City of Harrisonburg v. *Chesapeake & O. Ry. Co.*, 34 Fed. Supp. 640, western district of Virginia.—The Commission has the power to determine reasonableness of rates and name a rate as reasonable, declining to approve the rate sought, so long as it has before it evidence on which to base its judgment. Evidence of other comparable rates is pertinent and may properly be considered.

That evidence made a part of the record had originally been offered in other cases did not impair its effect on the instant case or deprive it of the character of independent and original evidence.—Id.

That the findings of the Commission need not include a statement of the evidential facts on which its conclusions are based is well settled. What is required is a statement of the ultimate facts found by the Commission and on which the right to recover damages is based.—Id.

City of Danville v. *Chesapeake & O. Ry. Co.*, 34 Fed. Supp. 620, western district of Virginia.—The amount of damage, if any is recoverable, is the difference between the amount actually paid in pursuance of the rate exacted and the amount which would have been paid on such rate as the Commission found to be reasonable.

The court is not concerned with whether it, in exercise of an independent judgment, would have reached the same conclusion as the Commission. When that body has exercised its judgment in a matter entrusted to it by law, and upon substantial evidence before it, the court cannot undertake to review that judgment.—Id.

As in each instance carriers were required to charge no more than was reasonable or run the risk of suffering penalty for overcharges, and under fourth-section petition rates were not prescribed, but carriers were allowed an exception to operation of the section, the rates were voluntarily established. Award sustained.—Id.

Sharp v. *Barnhart*, 117 Fed. (2d) 604, Seventh Circuit.—When original complaint contained allegation as to damages which by stipulation was withdrawn, after full hearing, and action was dismissed on the ground that jurisdictional amount was not involved, the court's refusal thereafter to permit amendment to include an element of damage was not abuse of discretion.

RES JUDICATA

Ripperger v. *A. C. Allyn & Co., Inc.*, 37 Fed. Supp. 373, southern district of New York.—The principles of *res judicata* apply to questions of jurisdiction as well as to other issues.

Crancer v. *Lowden*, 121 Fed. (2d) 645, Eighth Circuit.—Admitting in evidence an opinion of the Commission which involved the same commodity was not prejudicial since the case was tried without jury and the district court did not treat the opinion as being *res judicata.*

SAFETY APPLIANCE ACTS

Southern Ry. Co. v. *Stewart*, 115 Fed. (2d) 317, Eighth Circuit.—The jury may not be permitted to speculate as to the cause of the injury suffered while coupling cars, and the case must be withdrawn from its consideration unless there is evidence from which the inference may reasonably be drawn that the injury suffered was caused by the negligent act of the employer.

It was the duty of the deceased to use the pin lifter in opening the knuckle on the car so as to prepare it for impact. A court cannot say that one pull upon the lever and its failure to respond, regardless of the force used or the manner of operation, is sufficient to show a defective coupler, nor can it say that one pull can never be sufficient to show reasonable force. In absence of substantial evidence, judgment will be reversed.—Id.

A violation of the statute is shown by proof that cars upon a fair trial failed to couple automatically by impact.—Id.

Cusson v. *Canadian Pac. Ry. Co.*, 115 Fed. (2d) 430, Second Circuit.—A railroad is not responsible for all injuries which defective equipment may cause, but only for those which should have been foreseen. The act imposes absolute liability, regardless of fault. This means the road is charged with knowledge of the defect as though it actually had it.

In construing the safety-appliance acts it must be borne in mind that their purpose was primarily to secure the safety of railroad employees and to minimize

the dangers of a calling made dangerous in part by defects in the equipment the men are required to use.—Id.

That the car was not in motion does not mean that it was not in "use."—Id.

Car alleged to have had a defective brake, coupled to car of another company by trainman of a third railroad company, was in "use" by the employer within the meaning of the act, when the trainman was injured in a fall from the top of the second company's car when attempting to jump to the first company's car, too far away as a result of defective brake which the trainman had set, to prevent it from drifting, but the brake did not hold on "kick" by locomotive, for coupling.—Id.

Wallar v. *Southern Pac. Co.*, 37 Fed. Supp. 475, northern district of California, southern district.—State law does not apply to headlight requirements because Congress has occupied the field. The State law is suspended by title 45, sections 22–34.

While extreme care and diligence is required of the railroad company in keeping its track in a safe condition, it is not an insurer of the safety of traffic.

SIZES AND WEIGHTS OF MOTOR VEHICLES

Whitney v. *Johnson*, 37 Fed. Supp. 65, eastern district of Kentucky.—Section 225 of the Motor Carrier Act authorizes the Commission to investigate and report to Congress on the need for Federal regulation of sizes and weights of motor vehicles; it imposes no duty and confers no authority on the Commission to regulate the sizes and weights of motor vehicles.

Limiting freight trucks and loads to total of 18,000 pounds gross weight for operation over the State's highways, applicable to operation in interstate commerce, does not violate the due-process-of-law clause of the Fourteenth Amendment.—Id.

The court cannot be asked to say whether a certain load limit is proper or improper. The question must be addressed to the State legislature.—Id.

The matter of regulating the load limit of motortrucks is with the States.—Id.

State statute limiting to 18,000 pounds gross weight including load, of any truck operating over its highways, is not class legislation.—Id.

Although the weight of passenger busses is not limited by express statutory enactment, it is limited by a method of taxation based on seating capacity, in addition to the provision limiting weight in accordance to the weight of tires applicable to all vehicles used on the State highways. Even though passenger busses are permitted to carry greater loads than trucks, the legislation is not violative of the Federal Constitution.—Id.

STATE REGULATIONS

Sharp v. *Barnhart*, 117 Fed. (2d) 604, Seventh Circuit.—The Motor Carrier Act does not prevent the application of the salutary local provisions to promote safety of motor traffic.

Cain v. *Bowlby*, 114 Fed. (2d) 519, Tenth Circuit.—"Locomotive," "car," "stagecoach," in the State statute include quasi public corporations and agencies engaged in serving the public in the transportation of passengers and goods; applies to a truck engaged as a common carrier for hire.

Interstate Natural Gas Co., Inc. v. *Louisiana Public Service Commission*, 34 Fed. Supp. 980, eastern district of Louisiana, Baton Rouge division.—A Delaware natural-gas company, without charter to act as a common carrier or public-utility corporation, authorized to do business in Louisiana only as a private corporation, 99.83 per cent of its gas moving and sold in interstate commerce, is not a public utility or common-carrier pipe line subject to State regulation.

Alton R. Co. v. *United States*, 36 Fed. Supp. 898, eastern district of Michigan, southern division.—Applicant who inadvertently or temporarily made deliveries into or operated through a State without its express authority having been previously granted is not operating as a common carrier on its public highways in defiance of its laws, when the State itself had not sought to exclude the carrier.

TARIFF CONSTRUCTION

Crancer v. *Lowden*, 121 Fed. (2d) 645, Eighth Circuit.—That a proceeding involving reasonableness of rates on used pipe-thread protectors was pending before the Commission did not preclude bringing action in the court which involved the classification and application of existing tariffs in accordance with

what the facts disclosed the commodity actually was. No administrative problem is involved.

That the pipe-thread protectors were steel, not iron, does not prevent their classification as iron pipe-thread protecting rings, although other metal objects were listed in the tariffs under the heading "Iron or Steel" which did not appear above the item "Pipe Fittings," since the tariff provided that the word "iron" included "steel" unless the contrary appeared, and vice versa.

The findings will not be set aside because there was no proof that the articles had a market or commercial value for any purpose other than remelting when the evidence showed that the seven carloads involved, and many others, of pipe-thread protectors were purchased for reconditioning purposes, with substantial evidence that a fairly well established price existed for used pipe-thread protectors in the territory where they were available.—Id.

If the articles were scrap iron fit for remelting purposes only, their purchase by appellants for another purpose would not change the character of the articles. Nor should one rate be applied to the shipment of an article to be used for one purpose and another rate be applied to the shipment of the same article when it is to be used for another purpose.—Id.

Evidence of the use for which the articles were purchased and the use to which they were actually put was properly considered in determining what they actually were.—Id.

Indiana Harbor Belt R. Co. v. *Jacob Stern & Sons*, 37 Fed. Supp. 690, northern district of Illinois, eastern district.—As there is no question of any use of unusual words or of words involving unusual or technical meanings, the court has original jurisdiction to interpret the tariff, as well as to consider its legality.

Tariffs are written by the carriers. It is presumed that they have used all the words necessary to protect their own interests. Therefore, it is the rule, followed by the courts and the Commission, in doubtful cases, to adopt that interpretation which is most favorable to the shipper.—Id.

As it would have been a simple matter for the demurrage-tariff authors to have rearranged and repunctuated the tariff language so that the meaning they now assert would have been clear, but they did not, the court must assume they did not so intend.—Id.

A carrier cannot avoid obligations imposed by statutory or common law by publishing and filing a tariff to that effect.—Id.

A demurrage tariff charge does not become applicable merely because it is published. Before any tariff charge can become due, there must have been some service rendered, or facility furnished, constituting consideration for the tariff charge.

Oregon-W. R. & Nav. Co. v. *Pacific Continental Grain Co.*, 38 Fed. Supp. 230, district of Oregon.—When a car lay in storage for a period of time, or where shipment was made on contracts subsequently entered, or where the carload was applied in small quantities to a variety of shipments outside the State, intention to ship intrastate, to intrastate point, is shown.

TRANSIT

Board of Trade of Kansas City v. *United States*, 36 Fed. Supp. 865, western district of Missouri, western division.—Findings that use of transit balances under through rates and proportional rates out of the same rate-break markets tend to disorganize rate-break combinations, disorganize the rate structure, make uncertain in advance the out-bound basis of charge, give undue preference to those having both transit balance and proportional rates, depress the price of grain at rate-break markets and at country points, reduce carrier revenue, were facts from which the Commission could conclude change should be made, denying primary markets the privilege of dual methods of transit.

The Commission may not equalize unequal natural conditions. But the Commission may adjust rates to meet transportation conditions. Transportation conditions may and should include conditions other than mere operating conditions.—Id.

TAXES

[See also Bankruptcy Act, *supra*.]

Department of Treasury of Indiana v. *Wood Preserving Corp.*, 313 U. S. 62.—State tax on gross receipts derived by a foreign corporation from goods bought and sold by it within the State, sustained. Sale of ties to the railroad in Indiana

was a local transaction, separate from the creosoting service performed in another State, and receipts therefrom were subject to State tax.

Best & Co., Inc. v. *Maxwell*, 311 U. S. 454.—Interstate commerce can hardly survive in so hostile an atmosphere as that created by State requirement that one who displays samples in temporary quarters, for the purpose of securing retail orders to be filled from outside the State, shall pay a privilege tax of $250 therefor.

Adams County v. *Northern Pac. Ry. Co.*, 115 Fed. (2d) 768, Ninth Circuit.—The due-process clause of the Fourteenth Amendment prohibits the State from taxing property outside of its limits and within the jurisdiction of another State. Yet no exact formula for making the apportionment of value of the operating property between the various States has been authoritatively declared. The railroad has the burden of showing the method adopted is as to it arbitrary and unreasonable.

Even if erroneous method was adopted in basing findings on the Commission's 1917 valuation, such error is immaterial unless the railway company can show that the error resulted in such excessive valuation as to indicate fraud, actual or constructive.

In re Globe Varnish Co., 114 Fed. (2d) 916, Seventh Circuit.—Paint moving continuously to Milwaukee freight station of the railroad ordering it from Chicago, moved interstate from the inception of the journey. It was not subject to the Illinois retailers occupational tax.

District of Columbia v. *Monumental Motor Tours, Inc.*, 122 Fed. (2d) 195, Court of Appeals, District of Columbia.—District of Columbia statute requiring owners of passenger vehicles having seating capacity of eight or more passengers, for hire, to pay $100 annual license fee per vehicle, does not interfere with interstate operation by a Maryland corporation; it interferes only with operation from point to point within the District. License tax applicable. Reciprocity provision of the District statute exempts the Maryland sightseeing bus operation from requirement to obtain District driver's permit and from vehicle registration.

State of Minnesota v. *Ristine*, 36 Fed. Supp. 3, district of Minnesota, third division.—Hayden-Cartwright Act. tax on motor fuels sold by or through post exchanges on United States military or other reservations, applied.

Crouch Transp. System, Inc. v. *Hargus*, 35 Fed. Supp. 148, western district of Missouri, St. Joseph division.—An interstate carrier must pay for its use of the highways of a State. Action to enjoin the State from interference with its interstate operation will be dismissed, plaintiff not coming into court with clean hands, having failed to pay State tax, but continuing to operate through State.

State of California v. *Anglim*, 37 Fed. Supp. 663, northern district of California, southern division.—Operation by California of a terminal railroad for moving carload freight for the public for hire, between State-owned port and connecting carriers and industries, was not a governmental function; was not immune from the tax imposed by virtue of the Carriers' Taxing Act.

Ocean Steamship Co. of Savannah v. *Allen*, 36 Fed. Supp. 851, Georgia, Macon division.—The Ocean Steamship Co. is not covered by the Carriers' Taxing Act.

APPENDIX F

AUTHORIZATIONS UNDER VARIOUS SECTIONS OF THE INTERSTATE COMMERCE AND TRANSPORTATION ACTS, AND LOANS UNDER THE RECONSTRUCTION FINANCE CORPORATION ACT

Certificates of convenience and necessity for construction of lines of railroad under section 1 (18) of the Interstate Commerce Act, as amended

Name of applicant	Location of line	Miles
Alabama, T. & N. R. Corp. trustee	Mobile County, Ala	1.500
Baltimore & O. R. Co. in Pa	Somerset County, Pa	8.300
Chesapeake & O. Ry. Co	Floyd County, Ky	10.000
Chicago, M., St. P. & P. R. Co. trustee	Greene County, Ind	.175
Colorado & S. Ry. Co	Huerfano County, Colo	.090
Denver & R. G. W. R. Co. trustee	Huerfano County, Colo	.179
Great Northern R. Co	Spokane County, Wash	8.000
Gulf, M. & O. R. Co	Lauderdale County, Miss	.160
Missouri Pac. R. Corp. in Nebr. trustee	Sarpy County, Nebr	.095
Norfolk & W. Ry. Co	Mingo County, W. Va., and Pike and Martin Counties, Ky.	3.750
Norfolk S. R. Co. receivers	Chatham County, N. C	2.000
Pennsylvania R. Co	Greene County, Ind	.110
Do	Allegheny County, Pa	.095
Pittsburgh, C. C. & St. L. R. Co. et al	Clark County, Ind	4.000
Strouds Creek & M. R. Co	Nicholas County, W. Va	3.960
Texas & P. Ry. Co. et al	Jefferson Parish, La	1.046
Unity Rys. Co	Allegheny County, Pa	1.378
Total number of miles		44.838

Certificates of convenience and necessity for abandonment of lines of railroad or the operation thereof, issued under section 1 (18) of the Interstate Commerce Act, as amended

Name of applicant	Location of line	Miles
Alabama & F. R. Co	Houston County, Ala	29.002
Arizona E. R. Co. et al	Maricopa County, Ariz	.916
Atlantic Coast Line R. Co	Dillon and Marlboro Counties, S. C	19.780
Do	Horry County, S. C	14.760
Do	Jefferson and Leon Counties, Fla	31.790
Do	Citrus County, Fla	6.000
Do	Alachua County, Fla	5.000
Do	Lee County, S. C	7.100
Augusta N. Ry	Saluda County, S. C	11.200
Baltimore & O. R. Co	Randolph and Upshur Counties, W. Va	12.030
Belington & N. R. Co. et al	Barbour County, W. Va	1.400
Bellefonte Central R. Co	Centre and Huntingdon Counties, Pa	22.770
Bennettsville & C. R. Co	Marlboro County, S. C	3.440
Boston & M. R	Middlesex County, Mass	6.000
Do	Coos County, N. H	12.000
Do	Hampden, Hampshire, and Worcester Counties, Mass.	10.500
Do	York County, Maine, and Strafford County, N. H.	5.500
Do	Essex County, Mass	20.000
Bridgton & H. Ry. Co	Cumberland and Oxford Counties, Maine	15.920
Burlington-R. I. R. Co	Harris and Galveston Counties, Tex	51.000
Central Pac. Ry. Co. et al	Shasta County, Calif	[1] 37.060
Central R. Co. of New Jersey trustees	Morris County, N. J	4.380
Do	Cumberland County, N. J	4.790
Do	Hudson County, N. J	3.000

[1] Abandonment of operation by Southern Pac. Co. restricted to 24.69 miles.

Certificates of convenience and necessity for abandonment of lines of railroad or the operation thereof, issued under section 1 (18) of the Interstate Commerce Act, as amended—Continued

Name of applicant	Location of line	Miles
Chattahoochee & G. R. Co. and Central of Georgia Ry. Co trustees.	Geneva and Covington Counties, Ala	48.269
Cherry Tree & D. R. Co	Indiana County, Pa	1.880
Chesapeake & O. Ry. Co	Lewis and Carter Counties, Ky	17.420
Chesterfield & L. R. Co. receivers	Chesterfield County, S. C	33.210
Chicago & N. W. Ry. Co. trustee	Forest County, Wis	3.333
Do	Gogebic and Ontonagon Counties, Mich	24.098
Do	Lafayette County, Wis	2.253
Chicago, M., St. P. & P. R. Co. trustees	Minnehaha and Lake Counties, S. Dak	29.820
Coeur d'Alene & P. d'O. Ry. Co	Kootenai County, Idaho	11.610
Colorado & S. Ry. Co	Jefferson, Clear Creek, and Gilpin Counties, Colo.	29.560
Do	Jefferson and Douglas Counties, Colo	3.890
Confluence & O. R. Co., et al	Somerset and Fayette Counties, Pa., and Garrett County, Md.	19.790
Crystal River R. Co	Garfield and Pitkin Counties, Colo	20.660
Crystal River & S. J. R. Co	Pitkin and Gunnison Counties, Colo	7.330
Delaware, L. & W. R. Co	Sussex County, N. J	10.100
Denver & R. G. W. R. Co. trustees	Huerfano County, Colo	2.370
Do	Conejos County, Colo., and Rio Arriba and Taos Counties, N. Mex.	125.310
DeKalb & W. R. Co	Kemper County, Miss	4.675
Detroit, T. & I. R. Co	Fayette and Madison Counties, Ohio	7.000
Duluth & N. E. R. Co	St. Louis County, Minn	46.680
Evansville & O. V. Ry. Co. Inc	Vanderburgh, Warrick, and Spencer Counties, Ind.	20.690
Evansville Suburban & N. R. Co	Vanderburgh County, Ind	5.500
Grand Trunk W. R. Co	Bay County, Mich	.920
Gulf, M. & O. R. Co	Lauderdale County, Miss	2.980
Huron & W. R. Co., et al	Bay County, Mich	9.730
Jefferson & N. W. R. Co	Marion and Cass Counties, Tex	19.930
Linville River Ry. Co	Avery and Watauga Counties, N. C	31.573
Los Angeles & S. L. R. Co. et al	San Bernardino County, Calif	4.837
Louisville & N. R. Co	St. Clair County, Ill	6.000
Louisville, H. & St. L. Ry. Co., and Louisville & N. R. Co.	Breckenridge and Ohio Counties, Ky	63.130
Minneapolis, N. & S. Ry	Dakota and Rice Counties, Minn	1.680
Missouri S. R. Co	Wayne and Reynolds Counties, Mo	53.800
Mobile & O. R. Co. receivers et al	Mobile County, Ala	29.920
Muskogee Electric Traction Co	Muskogee County, Okla	13.700
New York Central R. Co	Ingham, Eaton, and Jackson Counties, Mich	23.560
Do	Lewanee County, Mich., and Fulton County, Ohio.	6.610
New York, N. H. & H. R. Co. trustees	New Haven County, Conn	3.440
Do	Norfolk County, Mass	4.110
New York, S. & W. R. Co. trustee	Warren County, N. J., and Monroe County, Pa.	11.790
Northern Pac. Ry. Co	King County, Wash	8.743
Do	Thurston and Lewis Counties, Wash	8.761
Northwestern Pac. R. Co	Sonoma County, Calif	6.318
Ogden Mine R. Co	Sussex and Morris Counties, N. J	10.000
Oklahoma & R. M. R. Co	LeFlore County, Okla	16.950
Oregon Electric Ry. Co	Multnomah and Washington Counties, Oreg	12.760
Oregon Short Line R. Co. et al	Silver Bow County, Mont	1.451
Oregon-W. R. & Nav. Co. et al	Grays Harbor County, Wash	15.260
Pacific Coast Ry. Co	San Luis Obispo and Santa Barbara Counties, Calif.	63.950
Pacific Electric Ry. Co	Los Angeles County, Calif	2.750
Do	do	1.545
Do	Los Angeles and Orange Counties, Calif	3.308
Pennsylvania R. Co	Blair, Cambria, Indiana, and Venango Counties, Pa.	15.800
Do	Clearfield County, Pa	1.620
Do	Westmoreland County, Pa	2.700
Do	Clearfield County, Pa	1.000
Pittsburg, B. & L. E. R. Co. and Bessemer & L. E. R. Co.	Butler County, Pa	2.020
Prattsburgh Ry. Corp	Steuben County, N. Y	11.440
Raleigh & C. R. Co. and receivers	Marion and Dillon Counties, S. C	19.910
St. Louis-S. F. Ry. Co. trustees	Johnston, Marshall, and Bryan Counties, Okla	29.940
Sacramento N. Ry	Sacramento County, Calif	.630
Do	Alameda and San Francisco Counties, Calif	6.800
Santa Fe N. W. Ry. Co	Sandoval County, N. Mex	37.100
Santa Fe, S. J. & N. R. trustee	Sandoval County, N. Mex	24.900
Southern New York Ry. Inc	Herkimer County, N. Y	43.270
Southern Pac. Co	Tulare County, Calif	1.475
Do	do	5.799
Do	Lincoln County, Oreg	.330

Certificates of convenience and necessity for abandonment of lines of railroad or the operation thereof, issued under section 1 (18) of the Interstate Commerce Act, as amended—Continued

Name of applicant	Location of line	Miles
Southern Pac. R. Co. et al	Imperial County, Calif	11.744
Do	Yolo County, Calif	2.434
Do	Sutter and Yuba Counties, Calif	.709
Southern Ry. Co. in Kentucky et al	Woodford and Scott Counties, Ky	16.640
Stephenville N. & S. T. Ry. Co. et al	Coryell and Hamilton Counties, Tex	32.720
Susquehanna Connecting R. Co. et al	Lackawanna County, Pa	4.650
Texas & P. Ry. Co. et al	Orlean and Jefferson Parishes, La	[1] 1.030
Texas Electric Ry. Co	Dallas, Ellis, and Navarro Counties, Tex	51.820
United Rys. Co	Multnomah County, Oreg	3.730
Uvalde & N. Ry. Co	Uvalde and Real Counties, Tex	37.100
Virginia & S. W. Ry. Co. et al	Sullivan, Carter, and Johnson Counties, Tenn	46.000
Virginia & T. Ry	Ormsby, Lyon, and Storey Counties, Nev	20.000
Weatherford, M. W. & N. W. Ry. Co	Palo Pinto County, Tex	7.500
West Jersey & S. R. Co., and Pa.-Reading S. Lines.	Salem County, N. J	4.220
Western Maryland Ry. Co	Mineral County, W. Va	2.260
White & Black River Valley Ry. Co. et al	Jackson, Woodruff, and Monroe Counties, Ark	62.420
Wichita N. W. Ry. Co. receiver	Pratt, Edwards, and Pawnee Counties, Kans	99.470
Wrightsville & T. R. Co	Laurens, Dodge, Bleckley, and Pulaski Counties, Ga.	36.685
Yazoo & M. V. R. Co	Washington, Issaquena, and Sharkey Counties, Miss.	37.860
Do	Lauderdale County, Miss	4.220
Total number of miles		1,938.236

[1] Car ferries at New Orleans, La.

Certificates of convenience and necessity for acquisition and/or operation of lines of railroad issued under section 1 (18) of the Interstate Commerce Act, as amended

Name of applicant	Location of line	Miles
Central Pac. Ry. Co. et al	Shasta County, Calif	30.096
Georgia & F. R. receivers	Bulloch County, Ga	2.070
Gulf, M. & O. R. Co	Mobile County, Ala	2.500
Jay Street Connecting R	Kings County, N. Y	[1] 1.587
Jerseyville & E. R. Co	Jersey County, Ill	1.530
Klamath N. Ry. Co	Klamath County, Oreg	10.612
Missouri Pac. R. Co. trustee	Pawnee County, Kans	2.829
Nypano R. Co	Mercer County, Pa., and Trumbull County, Ohio.	2.090
Pennsylvania R. Co	Cook County, Ill., and Lake County, Ind	1.770
St. Louis-S. F. Ry. Co. trustees	Johnston, Marshall, and Bryan Counties, Okla	18.790
Skaneateles Short Line R. Corp	Onandaga County, N. Y	4.949
Springfield S. R. Co	Sangamon County, Ill	7.710
Total number of miles		85.533

[1] Including operation of car-float and lighterage routes formerly owned by Jay Street Terminal.

Authorizations issued under section 5 (2) of the Interstate Commerce Act, as amended, involving railroad properties

Acquiring carrier	Owning carrier	Miles of road	How acquired
Atchison, T. & S. F. Ry. Co. et al.	Denver & I. R. Co	7.000	Trackage rights.
Atchison, T. & S. F. Ry. Co	Colorado & S. Ry. Co. and Denver & R. G. W. R. Co.	129.750	Do.
Do	Buffalo N. W. R. Co	51.300	Merger.
Do	Oil Fields & S. F. Ry. Co	20.980	Do.
Do	Osage County & S. F. Ry. Co	61.920	Do.
Do	Kansas City, M. & O. Ry. Co	256.840	Do.
Baltimore & O. R. Co	Term. R. Assn. of St. Louis et al	2.510	Trackage rights.
Do	Baltimore & O. R. Co. in Pa	8.300	Operating contract.
Burlington-R. I. R. Co	Gulf, C. & S. F. Ry. Co	47.220	Trackage rights.
Chesapeake & O. R. Co	Virginia P. S. Co	2.300	Do.
Chicago, M., St. P. & P. R. Co. trustees.	Pittsburgh, C. C. & St. L. R. Co	11.000	Do.
Cleveland & P. R. Co. et al	Beaver Valley R. Co	3.100	Purchase.
Colorado & S. Ry. Co	Atchison, T. & S. F. Ry. Co. and Denver & R. G. W. Ry. Co.	229.950	Trackage rights.
Dayton Union Ry. Co. et al	Toledo & C. R. Co. et al	4.002	Purchase.
Denver & R. G. W. R. Co. trustee.	Colorado & S. Ry. Co	.090	Trackage rights.
East St. Louis Junction R. Co	St. Louis National Stockyards Co		Lease.[1]
Erie R. Co. trustees et al	Buffalo Creek R. Co	34.200	Modified lease.
Erie R. Co. trustees	Jamestown, W. & N. W. R. Co	5.400	Purchase.
Fort Worth & D. C. Ry. Co	St. Louis S. W. Ry. Co. of Tex	1.620	Trackage rights.
Galveston, City of	Galveston Wharf Co	4.260	Purchase.
Gulf, M. & O. R. Co	Yazoo & M. V. R. Co. et al	1.477	Trackage rights.
Lehigh V. R. Co	State Line & S. R. Co	24.030	Ownership of stock.
Louisiana & A. Ry. Co	Texas & P. Ry. Co	48.000	Trackage rights.
Do	St. Louis S. W. Ry. Co. et al	2.200	Do.
Madison, I. & St. L. R. Co	Madison, I. & St. L. Ry. Co	13.578	Purchase.
Minneapolis & St. L. Ry. Co	Minneapolis & St. L. R. Co	900.090	Purchase, etc.
Do	Minneapolis & St. L. R. Corp		Ownership of stock.
Minneapolis & St. L. R. Corp	Minneaplis & St. L. R. Co	513.650	Purchase, etc.
Missouri Pac. R. Co. trustee	Chester & Mt. V. R. Co	64.830	Lease.
Missouri Pac. R. Co. trustee and Illinois Central R. Co.	Jefferson S. W. R. Co	12.840	Operating contract.
Missouri Pac. R. Corp. in Nebr. trustee.	Chicago, B. & Q. R. Co	.840	Trackage rights.
Montour R. Co	Pittsburgh & W. V. Ry. Co	2.930	Do.
Moosic Mountain & C. R. Co. et al.	Wilkes-Barre & E. R. Co	8.020	Purchase, etc.
New York Central R. Co	Dillonvale & S. R. Co	4.416	Operating contract.
Norfolk & W. R. Co. et al	Norfolk Term. Ry. Co		Ownership of stock.
Norfolk S. R. Co. receivers	Durham & S. C. R. Co	40.409	Modified lease.
Northern Pac. Ry. Co	Minnesota & I. Ry. Co	142.000	Purchase.
Do	Big Fork & N. Ry. Co	32.000	Ownership of stock, etc.
Oregon Electric Ry. Co	Southern Pac. Co	3.500	Trackage rights.
Pacific Electric Ry. Co. et al	Los Angeles & S. L. R. Co	.475	Purchase, etc.
Pittsburgh & W. Va. Ry. Co	Montour R. Co	3.330	Trackage rights.
Reading Co	Philadelphia & R. Term. Co	1.130	Modified lease.
St. Louis Merchants Bridge Term. Ry. Co.	Madison, I. & St. L. R. Co		Ownership of stock.
St. Louis S. W. Ry. Co. of Tex. trustee.	Fort Worth & D. C. Ry. Co	2.230	Trackage rights.
Seaboard Air Line Ry. Co. receivers.	Virginian Ry. Co	2.260	Do.
Southern Ry. Co	Asheville & C. M. Ry. Co	2.470	Purchase.
Do	Asheville S. R. Ry. Co. in N. C	2.230	Do.
Do	Georgia Midland Term. Co		Do.
Texas & N. O. R. Co	Public Belt R. R. Comm. of La		Modified contract.[2]
Texas & P. Ry. Co. et al	do	15.310	Trackage rights.[2]
Do	Louisiana & A. Ry. Co	8.000	Trackage rights.
Unadilla V. Ry. Co	New York, O. & W. Ry. Co	22.290	Purchase.
Do	Wharton Valley Ry. Co	6.830	Do.
Union Pac. R. Co	Chicago, B. & Q. R. Co	0.924	Trackage rights.
Virginian Ry. Co	Chesapeake & O. Ry. Co	14.200	Do.
Western Maryland Ry. Co	Greenbrier, C. & E. R. Co	92.000	Lease.
Wichita Falls & S. R. Co	Wichita Falls & S. Ry. Co. and Wichita Falls, R. & Ft. W. R. Co.	127.330	Purchase.
Do	Wichita Valley Ry. Co	3.210	Trackage rights.
Winchester & Western R. Co	Winchester & Wardensville R. Co	23.200	Purchase.
Yazoo & M. V. R. Co	Gulf, M. & O. R. Co	1.300	Trackage rights.
Total number of miles		3,025.271	

[1] Livestock loading and unloading facilities, etc., at National Stock Yards, Ill.
[2] Involves bridge at New Orleans, La.

Authorizations issued under section 5 (2) of the Interstate Commerce Act, as amended, involving water carriers

Acquiring carrier	Owning carrier	Service	How acquired
Baltimore Steam Packet Co	Chesapeake S. S. Co. of Baltimore City.	Chesapeake Bay	Purchase.
Chesapeake S. S. Co. of Baltimore City, Atlantic Coast Line R. Co., Southern Ry. Co., and Seaboard Air Line Ry. Co. receivers.	Baltimore Steam Packet Co	do	Ownership of stock.
Mississippi Valley Barge Line Co	Campbell Transp. Co	Inland waterways	Do.
Ohio Barge Line, Inc	Carnegie-Illinois Steel Corp	Inland waterways	Lease.
United States Steel Corporation [1]	Warrior & Gulf Nav. Co		Ownership of stock.
Do	Ohio Barge Line, Inc		Do.
Warrior & Gulf Nav. Co	Tennessee Coal, Iron, & R. Co.	Gulf-Intracoastal	Lease.

[1] Holding company.

Authorization of the issuance of securities and the assumption of obligations and liabilities in respect of the securities of others under section 20a of the Interstate Commerce Act, as amended

Stock, common:	
For acquisition of property including equipment	$201,150.00
For acquisition of property other than equipment	1,059,000.00
For exchange for common stock previously issued	4,500,000.00
	[1] 10,000
For general corporate purposes (not segregated)	2,850.00
For reorganization	17,631,950.00
	[1] 169,000
Total	23,394,950.00
	[1] 179,000
Stock, preferred: For reorganization	18,305,200.00
Total stock	41,700,150.00
	[1] 179,000
Debentures:	
For refunding purposes	6,860,000.00
Assumption of obligation and liability in respect of $6,860,000.	
Bonds, collateral-trust: For exchange for unmatured funded debt	6,000,000.00
Bonds, income:	
For acquisition of property including equipment	2,525,000.00
For modification of interest	464,400.00
For reorganization	8,195,100.00
Total	11,184,500.00
Bonds, mortgage:	
For acquisition of property including equipment	3,750,000.00
For acquisition of property other than equipment	3,900,000.00
For additions and betterments (nature not fully specified)	2,000,000.00
For exchange for matured funded debt	350,000.00
For exchange for matured funded debt and for pledge	200,000.00
For exchange for matured funded debt or for sale to meet matured funded debt	32,500.00
For exchange for unmatured funded debt and for pledge	773,000.00
For extension of matured funded debt	11,864,500.00
For extension of matured funded debt and for pledge	3,875,000.00
For modification of interest	592,500.00
For modification of interest and of maturity	9,626,000.00
For pledge	98,376,000.00
For refunding purposes	1,897,000.00
For reorganization	14,155,100.00
For retention in treasury subject to further order	200,000.00
For sale to meet matured funded debt	4,429,000.00
For sale to meet matured and unmatured funded debt and for matured unfunded debt	18,000,000.00
For sale to meet unmatured funded debt	71,455,000.00
For sale to redeem preferred stock	3,000,000.00
Assumption of obligation and liability in respect of $154,384,000.	
Total	248,475,600.00
Total bonds	265,660,100.00

Notes, secured:	
For additions and betterments (nature not fully specified)	$1,050,000.00
Extension of matured funded debt	226,915.00
For general corporate purposes (not segregated)	50,000.00
For refunding purposes	30,000,000.00
For sale to meet matured funded debt	100,000.00
For sale to meet unmatured funded debt	210,000.00
Assumption of obligation and liability in respect of $320,528.43 equipment notes.	
Total	31,636,915.00
Notes, unsecured:	
For general corporate purposes (not segregated)	1,250,000.00
For sale to meet unmatured funded debt	4,000,000.00
Assumption of obligation and liability in respect of $900,000.	
Total notes	36,886,915.00
Equipment obligations:	
Assumed by carriers	274,859,000.00
Issued by carriers	500,000.00
Assumption of obligation and liability in respect of $3,397,000.	
Total	275,359,000.00
Certificates, trustees':	
For extension of matured unfunded debt	10,000,000.00
For refunding purposes	5,000,000.00
For sale to meet unmatured funded debt	250,000.00
Total	15,250,000.00
Notes, receivers': For extension of matured unfunded debt	12,733.56
Notes, trustees': For acquisition of equipment	3,400.00
Total notes	16,133.56
Grand total securities	641,732,298.56 [1] 179,000

[1] Shares of stock without par or nominal value.

Certificates of approval of loans issued under section 5 of the Reconstruction Finance Corporation Act, as amended

Carrier	Loan Approved
Chicago G. W. Ry. Co	$6,396,870
Chicago, St. P., M. & O. Ry. Co	[1] 1,680,000
Florida East Coast Ry. Co. trustees	1,000,000
Grand Trunk W. R. Co	[1] 5,692,000
Maryland & P. R. Co	88,500
Minneapolis & St. L. Ry. Co	4,000,000
Norfolk S. R. Co. receivers	[1] 938,000
Seaboard Air Line Ry. Co. receivers	[2] 1,905,000
Texas City Term. Ry. Co	1,897,000
Wabash R. Co	[2] 16,394,583
Total	[4] 39,991,953

[1] Purchase of securities of carrier by Reconstruction Finance Corporation.
[2] Approved as either (a) purchase, or (b) purchase and guaranty, or (c) guaranty of carrier's securities by Reconstruction Finance Corporation.
[3] Exchange of securities of newly created carrier for securities of old carrier and its receivers.
[4] Does not reflect the following partial revocation of approval granted in a prior year for (a) loans and (b) purchase of carrier's securities:

(a) Colorado & S. Ry. Co	$15,077.95
(a) Fort Worth & D. C. Ry. Co	15,077.95
(a) Savannah & A. Ry. Co	65,000.00
(b) Chicago, M., St. P. & P. R. Co. trustees	158,000.00

Status of outstanding loans under section 210 of the Transportation Act, 1920, as amended

PRINCIPAL AND INTEREST IN DEFAULT ON OCTOBER 1, 1941

Carrier	Principal	Interest
Alabama, T. & N. R. Corp	$151,500.00	$68,175.00
Des Moines & C. I. R	633,500.00	501,646.34
Fort Dodge, D. M. & S. R. Co	200,000.00	143,164.91
Gainesville & N. W. R. Co.[1]	75,000.00	
Georgia & F. Ry. receiver	792,000.00	570,240.00
Minneapolis & St. L. R. Co	1,382,000.00	1,496,669.73
Missouri & N. A. Ry. Co.[1]	3,500,000.00	
Salt Lake & U. R. Co.[1]	872,600.00	
Seaboard Air Line Ry. Co	14,440,577.88	9,019,801.75
Seaboard B.-L. Co	1,256,000.00	276,046.96
Virginia S. R. Co.[1]	38,000.00	
Waterloo, C. F. & N. Ry. Co	1,260,000.00	1,421,383.29
Wilmington, B. & S. R. Co	90,000.00	62,100.00
Total	24,691,177.88	$13,559,227.98

[1] Assets of these carriers have been completely liquidated, and were insufficient to meet these claims.

Certificates issued in settlement under section 204 of the Transportation Act, 1920, as amended January 7, 1941

Carrier	Amount
Fairport, P. & E. R. Co	$368.70
Hartford E. Ry. Co	776.69
Missouri S. R. Co	3,105.22
Nevada Central R. Co	17,072.73
Union R. Co. (Pa.)	150,000.00
Total	[1] 171,323.34

[1] In addition, a certificate in the amount of $3,018.19 was issued in the Savannah & Southern Railway case in partial liquidation of an amount of $3,565.45 due from that company to the United States Government under section 209.

Claims dismissed under section 204 of the Transportation Act, 1920, as amended January 7, 1941

Bevier & S. R. Co.
Big Sandy & K. R. Ry. Co.
Bingham & G. Ry. Co.
Birmingham, S. & M. R. Co.
Chicago & C. R. R. Co.
DeKalb & W. R. Co.
Gulf & S. R. R. Co.
Kalamazoo, L. S. & C. Ry. Co.
Lakeside & M. R. Co.
Lake Erie & F. W. R. Co.
Marinette, T. & W. R. Co.
Morehead & N. F. R. Co.
Morgan & F. Ry. Co.
Mount Hood R. Co.
Nevada Northern Ry. Co.
Nevada Transp. Co.
Ray & G. V. R. Co.
St. Louis, K. & S. E. R. Co.
St. Louis, T. & E. R. Co.
Sand Springs Ry. Co.
Stanley, M. & P. Ry. Co.
Sugar Land Ry. Co.
Sumpter Valley Ry. Co.
Tennessee &. N. C. Ry. Co.
Texas, O. & E. R. Co.
Union & G. S. R.
Visalia Electric R. Co.
Washington Western Ry. Co.
White River R. Co.
Winifrede R. Co.

APPENDIX G

RAILROAD COMPANIES IN REORGANIZATION (OR RECEIVERSHIP) PROCEEDINGS

	Mileage operated 1940
Proceedings under section 77:	
Akron, Canton & Youngstown Railway Company	171
Alabama, Tennessee & Northern Railroad Corporation	218
Boston & Providence Railroad Corporation [1]	
Boston Terminal Company	
Central of Georgia Railway Company	1,864
Central Railroad Company of New Jersey	711
Chicago & North Western Railway Company	8,319
Chicago Great Western Railroad Company	1,502
Chicago, Indianapolis & Louisville Railway Company	549
Chicago, Milwaukee, St. Paul and Pacific Railroad Company	10,854
Chicago, Rock Island and Pacific Railway Company (system)	7,900
Denver & Rio Grande Western Railroad Company	2,566
Duluth, South Shore & Atlantic Railway Company (system)	576
Erie Railroad Company (system)	2,392
Florida East Coast Railway Company	685
Fonda, Johnstown & Gloversville Railroad Company	20
Fort Dodge, Des Moines & Southern Railroad Company (electric)	149
Fort Smith, Subiaco & Rock Island Railroad Company	15
Kansas City, Kaw Valley & Western Railroad Company (electric)	35
Meridian & Bigbee River Railway Company	50
Minneapolis, St. Paul & Sault Ste. Marie Railway Company	4,267
New Jersey and New York Railroad Company	42
Missouri Pacific Railroad Company (system)	10,254
New York, New Haven & Hartford Railroad Company (system)	1,853
New York, Ontario & Western Railway Company	576
New York, Susquehanna & Western Railroad Company	144
Oregon, Pacific & Eastern Railway Company	20
St. Louis-San Francisco Railway Company	4,769
St. Louis Southwestern Railway Company	1,650
Spokane International Railway Company	152
Tampa Northern Railroad Company	7
Western Pacific Railroad Company	1,195
Wilkes-Barre & Eastern Railroad Company [2]	
Yosemite Valley Railway Company	78
Receivership proceedings (steam railroads):	
California and Oregon Coast Railroad Company	15
Chicago, Attica & Southern Railroad Company	154
Chicago, Springfield & St. Louis Railway Company	87
Georgia & Florida Railroad	408
Georgia, Southwestern & Gulf Railroad (system)	36
Louisiana Southern Railway Company	15
Minneapolis & St. Louis Railroad Company	1,409
Norfolk Southern Railroad Company	733
Pittsburg, Shawmut and Northern Railroad Company	191
Rio Grande Southern Railroad Company	172
Rutland Railroad Company	407
Seaboard Air Line Railway Company (system)	4,363

[1] Operated by New York, New Haven & Hartford Railroad for account of the Boston & Providence Railroad Corporation.

[2] Operation discontinued as of March 26, 1939. 8.02 miles of road leased to and operated by the Erie Railroad.

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	Mileage operated 1940
Receivership proceedings (steam railroads)—Continued.	
South Dayton Railway Company	
Tallulah Falls Railway Company	57
Virginia & Truckee Railway	68
Wabash Railway Company (system)	2,703
Waco, Beaumont, Trinity & Sabine Railway Company	41
Wilmington, Brunswick & Southern Railroad Company	30
Wisconsin Central Railway Company [3]	
Yreka Western Railroad Company	8
Receivership proceedings (electric railroads):	
Bellaire-Southwestern Traction Company [4]	
Chicago, Aurora & Elgin Railroad Company	65
Chicago North Shore & Milwaukee Railroad Company	130
Indiana Railroad	151
Waterloo, Cedar Falls & Northern Railway Company	101
Wheeling & Western Railway Company [4]	

[3] Owned mileage 972, operated by Minneapolis, St. Paul & Sault Ste. Marie Railway, a subsidiary of the Canadian Pacific Railway.

[4] Mileage of 2 and 7 miles, respectively, of the Bellaire-Southwestern Traction Co. and the Wheeling & Western Railway is operated by the Co-operative Transit Company.

APPENDIX H

STATEMENT OF APPROPRIATIONS AND OBLIGATIONS FOR THE FISCAL YEAR ENDED JUNE 30, 1941

An Act making appropriations for the Executive Office * * * and for other purposes, approved April 18, 1940:

For 11 commissioners, secretary, and for all other authorized expenditures necessary in the execution of laws to regulate commerce, including 1 chief counsel, 1 director of finance, and 1 director of traffic, at $10,000 each per annum:		
General	$2, 580, 940. 00	
Received by transfer from U. S. Maritime Commission	17, 610. 00	
		$2, 598, 550. 00
To enable the Interstate Commerce Commission to enforce compliance with section 20 and other sections of the Interstate Commerce Act as amended by the act approved June 29, 1906, and the Transportation Act, 1920 (49 USC 20), including the employment of necessary special accounting agents or examiners:		
Accounts		840, 000. 00
To enable the Interstate Commerce Commission to keep informed regarding and to enforce compliance with acts to promote the safety of employees and travelers upon railroads; the act requiring common carriers to make reports of accidents and authorizing investigations thereof; and to enable the Interstate Commerce Commission to investigate and test appliances intended to promote the safety of railway operation, as authorized by the joint resolution approved June 30, 1906 (45 USC 35), and the provision of the Sundry Civil Act approved May 27, 1908 (45 USC 36, 37), to investigate, test experimentally, and report on the use and need of any appliances or systems intended to promote the safety of railway operation, inspectors:		
Safety of employees		506, 000. 00
For all authorized expenditures under section 26 of the Interstate Commerce Act, as amended by the Transportation Act, 1920, and the act of Aug. 26, 1937 (49 USC 26), with respect to the provision thereof under which carriers by railroad subject to the act may be required to install automatic train-stop or train-control devices which comply with specifications and requirements prescribed by the Commission, including investigations and tests pertaining to block-signal and train-control systems, as authorized by the joint resolution approved June 30, 1906 (45 USC 35), and including the employment of the necessary engineers:		
Signal and train-control devices		126, 810. 00

For all authorized expenditures under the provisions of the act of Feb. 17, 1911, entitled "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto" (45 USC 22), as amended by the act of March 4, 1915, extending "the same powers and duties with respect to all parts and appurtenances of the locomotive and tender" (45 USC 30), and amendment of June 7, 1924 (45 USC 27), providing for the appointment from time to time by the Interstate Commerce Commission of not more than 15 inspectors in addition to the number authorized in the first paragraph of section 4 of the Act of 1911 (45 USC 26), and the amendment of June 27, 1930 (45 USC 24, 26), including such legal, technical, stenographic, and clerical help as the business of the offices of the chief inspector and his 2 assistants may require:

Locomotive inspection		$475,000.00

To enable the Interstate Commerce Commission to carry out the objects of the act entitled "An Act to amend an Act entitled 'An Act to regulate commerce', approved February 4, 1887, and all Acts amendatory thereof, by providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities," approved March 1, 1913, as amended by the Act of June 7, 1922 (49 USC 19a), and by the "Emergency Railroad Transportation Act, 1933" (49 USC 19a), including one director of valuation at $10,000 per annum:

Valuation		640,000.00

For all authorized expenditures necessary to enable the Interstate Commerce Commission to carry out the provisions of the Motor Carrier Act, approved August 9, 1935 (49 U. S. C. 301–327) including one director at $10,000 per annum and other personal services in the District of Columbia and elsewhere; traveling expenses; supplies; services and equipment; not to exceed $1,000 for purchase and exchange of books, reports, newspapers, and periodicals; contract stenographic reporting services; purchase (not to exceed $18,000), exchange, maintenance, repair, and operation of motor-propelled passenger-carrying vehicles when necessary for official use in field work; not to exceed $5,000 for the purchase of evidence in connection with investigations of apparent violations of said act, $3,690,000: Provided, that joint-board members may use Government transportation requests when traveling in connection with their duties as joint board members:

Motor-transport regulation		3,690,000.00

For all printing and binding for the Interstate Commerce Commission, including reports in all cases proposing general changes in transportation rates and not to exceed $17,000 to print and furnish to the States, at cost, report-form blanks, and the receipts from such reports and blanks shall be credited to this appropriation:

Printing and binding	$200,000.00	
Received by transfer from United States Maritime Commission	1,600.00	201,600.00
Total		9,077,960.00

Amount obligated under appropriations for the fiscal year ended June 30, 1941:		
General		$2, 575, 362. 29
Accounts		796, 158. 30
Safety		489, 817. 62
Signal and train-control devices		119, 843. 11
Locomotive inspection		469, 553. 40
Valuation		639, 768. 94
Motor-transport regulation		3, 626, 805. 19
Printing and binding		201, 600. 00
Total		8, 918, 908. 85
Unobligated balances of appropriations:		
General	$23, 187. 71	
Accounts	43, 841. 70	
Safety	16, 182. 38	
Signal and train-control devices	6, 966. 89	
Locomotive inspection	5, 446. 60	
Valuation	231. 06	
Motor-transport regulation	63, 194. 81	
Printing and binding		159, 051. 15
Total		9, 077, 960. 00
Statement of receipts from fees paid during the fiscal year ended June 30, 1941, as required by section 313 of Public, No. 212, 72d Cong.		
Certifying tariffs and records		3, 154. 10

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